



1992

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Original Citation

David R. Barnhizer, The Purposes of the University in the First Quarter of the Twenty-first Century, 22 Seton Hall Law Review 1124 (1992)

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Citation: 22 Seton Hall L. Rev. 1124 1991-1992



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THE PURPOSES OF THE UNIVERSITY IN THE FIRST QUARTER OF THE TWENTY-FIRST CENTURY

*David Barnhizer**

I. INTRODUCTION

The earliest universities were informal associations of students coming together to acquire otherwise inaccessible knowledge through lectures and discourse.¹ If a teacher provided useful information, the students contributed money.² Otherwise, the itinerant lecturer presumably found more productive employment or starved. The arrangements between students and teachers were so loose that Oxford University cannot even fix a precise moment when it came into existence.³ This soon changed as university teachers organized their efforts, and the Roman Catholic Church and secular authorities learned that control of knowledge creates power.⁴

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I wish to acknowledge the extremely helpful comments made on earlier drafts by my law colleagues, Deborah A. Geier, David Goshien, Steven R. Smith and Victor Streib, and Timothy Runyan, Professor of History at CSU. Any remaining defects are my own.

¹ For an intriguing analysis of the change generated within us by the "invention of typography" contrasted with reading manuscripts, see MARSHALL McLuhan, *THE GUTENBERG GALAXY* 153-58 (1962). See generally WALTER ULLMAN, *LAW AND POLITICS IN THE MIDDLE AGES: AN INTRODUCTION TO THE SOURCES OF MEDIEVAL POLITICAL IDEAS* (1975); A GENERAL SURVEY OF EVENTS, SOURCES, PERSONS AND MOVEMENTS IN CONTINENTAL LEGAL HISTORY (1968) [hereinafter *CONTINENTAL LEGAL HISTORY*]; I THE HISTORY OF THE UNIVERSITY OF OXFORD, *THE EARLY OXFORD SCHOOLS* (J. Catto ed., 1984) [hereinafter *THE HISTORY OF OXFORD*].

The university traces its roots to the *studium generale*, or university corporation, of the early medieval period. The term university came from the Roman *universitas*, which signified only "a union of many persons for a common purpose." That common purpose was often to create affordable eating and lodging affiliations rather than education. In their earliest stages the schools were voluntary association of teachers and students. Paul Farmer, *Nineteenth-Century Ideas of the University: Continental Europe*, in *THE MODERN UNIVERSITY* 3 (Margaret Clapp ed. 1950). See also essays by Charles C. Gillispie, *English Ideas of the University in the Nineteenth Century*, in *THE MODERN UNIVERSITY*, *supra*, at 27; G.W. Pierson, *American Universities in the Nineteenth Century: The Formative Period*, in *THE MODERN UNIVERSITY*, *supra*, at 59.

² See generally *CONTINENTAL LEGAL HISTORY*, *supra* note 1.

³ See generally *THE HISTORY OF OXFORD*, *supra* note 1.

⁴ As noted in one chronicle of the middle ages:

As academics recognized the greater benefits and protections afforded by an organized system, universities became increasingly formal institutions with well-developed bureaucracies. From this emerged a shifting pattern of academic orthodoxies which, even to this day, sometimes function in much the same way as did the medieval guilds, tending to create special rules and secretive mysteries available only to initiates and, in the process, often stifling the development and sharing of new knowledge.⁵ American law schools behaved in this manner for nearly a century, only recently and chaotically beginning to break free from the intellectually rigid mold of Langdellian "pseudo-science."⁶ Orthodoxies seek to enhance their power, almost unwittingly acting to guarantee their dominance and continued

[B]eginning . . . with the 1300's—the schools now founded would usually be authorized by charter of the Pope or of the Emperor. The emperors came to realize (as Justinian and Charlemagne had done in their day) that education, especially, as fitting for public office, might well be taken under their control. The Church, too, which had even in the Middle Ages charged itself with the work of education, was less than ever disposed to renounce this prerogative; for it had need to take measures to diminish the widening breach between Science and Faith. And so it came about that nearly all the universities, either at the time of founding or afterwards, were now in possession of a papal charter carrying with it valued privileges.

Thus began the tendency, which resulted later in a universal practice, to treat the universities as agencies of government—in short, State universities.

CONTINENTAL LEGAL HISTORY, *supra* note 1, at 14.

⁵ Consider also Paul Goodman's analysis of how such "elite" institutions as Oxford and Cambridge often work to repress new ideas. In *Compulsory Mis-Education and the Community of Scholars*, Goodman describes the process:

The Dominican genius for putting out the fire of a dangerous idea by introducing lofty irrelevancies—invented in Paris—is still rampant in the style of tolerant bigotry of our American Catholic universities. . . . Oxford and Cambridge. . . have been peculiar masterpieces of how to imitate the pomp of a paternalistic Establishment and, loaded with privileges and architecture, to keep one's mouth shut.

PAUL GOODMAN, *COMPULSORY MIS-EDUCATION AND THE COMMUNITY OF SCHOLARS* 195 (1969).

Peter Berger observed: "Very potent and simultaneously very subtle mechanisms of control are constantly brought to bear upon the actual or potential deviant. These are the mechanisms of persuasion, ridicule, gossip and opprobrium." PETER BERGER, *INVITATION TO SOCIOLOGY: A HUMANISTIC PERSPECTIVE* 11 (1963).

⁶ See, e.g., ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S* (1983) (noting that in the past, most legal scholars simply gathered and regurgitated legal doctrine); Roger Cramton, *The President's Address, What's It All About: Teaching and Scholarship*, ASS'N AM. L. SCH. NEWSLETTER, January, 1985, at 1 (indicating the breakdown of the traditional legal orthodoxy). For a more thorough discussion of the rigidity and subsequent changes in America's law schools, see *infra* notes 141-55 and accompanying text.

existence.⁷ Unlike religious organizations and craft guilds, however, no academic orthodoxy makes a conscious decision to restrict the development of new insights. The academic's commitment is to the expansion of understanding rather than its repression.⁸ This produces a subtle internal dynamic that eventually overcomes the inherent tendencies of humans and human systems to become static and self-satisfied, content with incremental micromanipulation of the status quo. The combined power of need, creativity and intellectual curiosity is too great to allow academic disciplines to remain static for too long. Academic orthodoxies therefore go through "boom and bust" cycles in which their strength and ability to control waxes and wanes.⁹

⁷ One of the reasons an orthodoxy possesses its power is suggested by Peter Berger in *Invitation to Sociology*. "We want to obey the rules. We want the parts that society has assigned to us." BERGER, *supra* note 5, at 93. Berger also adds that, "[i]nstitutions carry within them a principle of inertia, perhaps founded ultimately on the hard rock of human stupidity." *Id.* at 67.

⁸ The university ideal has been described as the "academic Dogma," the pursuit of knowledge for its own sake. The ideal is a force that drives and insulates the operation of our intellect; it allows us to inquire on our terms, an incredible privilege in the modern world, a privilege that bestows a significant responsibility. The spirit of the ideal gives life to all else that the university does. See Ward Madden, *Foreword* to ROBERT NISBET, *THE DEGRADATION OF THE ACADEMIC DOGMA: THE UNIVERSITY IN AMERICA, 1945-1970* at vi (1971). An illuminating series of essays is found in JAMES PERKINS, *THE UNIVERSITY IN TRANSITION* (1966). See also SHELDON ROTHBLATT, *TRADITION AND CHANGE IN ENGLISH LIBERAL EDUCATION* 166 (1976); Farmer, *supra* note 1 (describing modern European assumptions concerning the role of universities).

Different concepts of the university ideal have competed for primacy. Madden's concept is one that has been dominant in the Scientific Age. Another view is the articulation by John Henry Cardinal Newman in his prefatory remarks to *The Idea of a University*. Cardinal Newman begins:

The view taken of a University in these Discourses is the following:— That it is a place of *teaching universal knowledge*. This implies that its object is, on the one hand, intellectual, not moral; and, on the other hand, that it is the diffusion and extension of knowledge rather than the advancement. If its object were scientific and philosophical discovery, I do not see why a University should have students; if religious training, I do not see how it can be the seat of literature and science.

JOHN NEWMAN, *THE IDEA OF A UNIVERSITY* xxvii (Longmans ed., 1974). *But see* THE CARNEGIE COMMISSION ON HIGHER EDUCATION, *THE PURPOSES AND THE PERFORMANCES OF HIGHER EDUCATION IN THE UNITED STATES* 1 (1973) [hereinafter *THE CARNEGIE COMMISSION REPORT*]; Farmer, *supra* note 1.

⁹ Arthur Koestler has described how ideas and knowledge pass through definite cycles:

The new territory opened up by the impetuosity of a few geniuses, acting as a spearhead, is subsequently occupied by the solid phalanxes of mediocrity; and soon the revolution turns into a new orthodoxy . . . and ultimately, estrangement from reality The emergent orthodoxy hardens into a "closed system" of thought, unwilling or unable to assimilate a new empirical data or to adjust itself to significant

The emergence of often rigid mindsets in the academic world is not a new phenomenon. Galileo Galilei once wrote to Johannes Kepler bemoaning the virulent resistance to his ideas by colleagues at Padua University, comparing them to "glutted adders."¹⁰ Nor was Galileo's experience unique. Many fundamental discoveries of the Scientific Age occurred outside the university, including Einstein's Special Theory of Relativity.¹¹

Prior to Gutenberg's invention of the printing press the medieval universities were vital mechanisms for the efficient transmission of knowledge to an audience lacking other paths of access to the few texts that were laboriously and expensively copied by hand.¹² The methodology of lectures and notetaking made it possible for universities to share the newly rediscovered

changes in other fields of knowledge; sooner or later the matrix is blocked, a new crisis arises, leading to a new synthesis, and the cycle starts again.

ARTHUR KOESTLER, *THE ACT OF CREATION* 255-56 (1964).

¹⁰ In his letter, Galileo recounts the obstinance he faced:

I wish, my dear Kepler, that we could laugh together at the extraordinary stupidity of the mob. What do you think of the foremost philosophers of this University? In spite of my oft-repeated efforts and invitations, they have refused, with the obstinacy of a glutted adder, to look at the planets or the Moon or my glass [telescope]! . . . Why must I wait so long before I can laugh with you?

Letter from Galileo to Johannes Kepler, *quoted in* A. WOLF, *A HISTORY OF SCIENCE, TECHNOLOGY, AND PHILOSOPHY IN THE 16TH AND 17TH CENTURIES* 29 (2d ed. 1950).

¹¹ A major example is the seventeenth century development of scientific academies outside the universities. Wolf describes the existing universities' resistance to being infected by the new ideas:

The Universities might have been expected to lead, or at least to share, in this movement for intellectual emancipation. But they did nothing of the kind. For they were controlled by the Church . . . [T]he vast majority of the pioneers of modern thought were either entirely detached from the Universities, or were but loosely associated with them.

Id. at 54.

Even when the changes are products of university action it is often due to external pressures and agendas. Rothblatt observes: "[I]t was government pressure . . . that really stirred the late nineteenth-century interest in science, applied science, and technology, and it was government fears about the problem of [German] imperial supremacy that pushed the universities towards the production of new knowledge."

ROTHBLATT, *supra* note 8, at 166.

¹² This obviously changed with the printing press and the onset of the industrial era. The Scientific Age has generated an incredible volume of information that has now exploded into a new universe of complexity, diversity and mass. This has been called "the information deluge." James Martin writes that the first scientific journal appeared in the 1660's, more than two centuries after Gutenberg's invention of the printing press. By 1750, there were ten scientific journals. With that number multiplied by a factor of ten every fifty years, roughly as follows:

wonders of Greece and Rome, philosophy, grammar, political theory, mathematics, rhetoric, the Roman Law and the beginnings of science and medicine.¹³ Without places to gather it would have been impossible to systematically disseminate the knowledge on any scale of consequence. Many of the early European universities were international centers of learning to which students flocked from throughout Europe.¹⁴

A Brief History of Change in the University World

As European nations and the United States were explosively transformed from agrarian and merchant societies to technological economies, it was essential for those societies to develop the capability of training their citizens in the newly demanded skills and knowledge.¹⁵ Then, as now, societies were engaged in an

1750	10
1800	100
1850	1,000
1900	10,000
1950	100,000

This explosion of knowledge is both cause and effect of the increasingly extreme specialization we have experienced in study, teaching, educational structure and scholarship. The specialization has occurred to such an extent that the holistic ideal of universal education that had characterized the medieval university and the Renaissance rapidly became an illusory dream. JAMES MARTIN, *THE WIRED SOCIETY* 115-122 (1978). For the result, see ROTHBLATT, *infra* note 110. McLuhan suggests that the shift from manuscript to type led to "visualized measurement and quantification" and that this altered mind-set played a significant role in the move to extreme specialization and fragmentation of knowledge. MCLUHAN, *supra* note 1, at 201-217.

¹³ The medieval university concentrated upon the fields of theology, jurisprudence, medicine, philosophy and the "arts." The seven liberal arts were contained within the Trivium (Grammar, Dialectic and Rhetoric) and the Quadrivium (Arithmetic, Geometry, Music and Astronomy). This broad curriculum was founded on the assumptions that there was need for a holistic understanding of human knowledge, and that such an understanding could be achieved. Specialization in one field of knowledge was not something that would come until much later. CONTINENTAL LEGAL HISTORY, *supra* note 1, at 97.

¹⁴ The law school at Bologna, for example, is reported to have enrolled as many as 13,000 students at its height. Harold Berman, *The Origins of Western Legal Science*, 90 HARV. L. REV. 894, 900 (1977).

¹⁵ A key distinction between the medieval and the modern university was the belief that the central mission of the medieval university was refinement of existing knowledge. See NEWMAN, *supra* note 8. The function of creating new knowledge as a primary role of the modern scientific university mainly developed in the past two centuries. This scientific and technological metaphor is visible in the restructuring of the American universities that will be discussed subsequently and in Christopher Langdell's assertion that if law was not a science, it had no business being taught within the university. See generally CONTINENTAL LEGAL HISTORY, *supra* note 1, at 127.

intensely competitive race for prestige and national preeminence in science, technology, trade and military power.¹⁶ The ability to gain economic advantage and military superiority was heavily dependent on the practical and theoretical output of universities. The highly competitive European nations could not afford to wait for the slow development and dissemination of new knowledge, nor could they continue to restrict knowledge to clerical and aristocratic elites.¹⁷ Although the aristocrats, of course, preferred the traditional model of learning and were offended by the expansion of higher education to "the masses" and merchant classes, epithetically labeling these latter "tradesmen," restricting learning to the aristocracy no longer served the expanding interests of European societies.¹⁸

¹⁶ Chomsky argues that it "is [as] pointless to discuss" the university's role apart "from concrete historical circumstances, as it would be a waste of effort to study any other social institution in this way." NOAM CHOMSKY, *FOR REASONS OF STATE* 299 (1990). The struggle among rising nation-states helped to make universities into tools of government and into resources for achieving national aims. The German universities of Halle, Göttingen, Berlin, Breslau and Bonn operated under close supervision from the government. Following Bismarck's unification of the German states, the German universities "became proud servants of the new German Empire The German universities took pride in their work of producing the schoolmasters and the bureaucrats and even providing the reserve officers for the army." Farmer, *supra* note 1, at 14.

¹⁷ As Rothblatt notes:

The challenge of industrial society was the foremost challenge education had ever faced, and therefore only the highest form of education could meet it. Industrial society was new, it overturned all known values and institution, it moved at a speed unprecedented in history, and it brought more actors on to the historical stage than had ever before been accommodated. Living in such a society—always restless and impatient, always demanding and unstable, without a center and without a common core of values—required more than style, conversation, or manners; more than sociability, liberality and civility.

ROTHBLATT, *supra* note 8, at 154.

¹⁸ The "radical" reformers in England contended that the excellence of an education should be based on its utility. The "conservatives" in the existing universities conversely valued education to the degree "proportional to its practical uselessness." Gillispie offers the suggestion that the prestige or "snob value" of classical studies as "a general instrument of education in the modern English-speaking world" stems from the fact that "nineteenth century Oxford tutors, who were determined to maintain their monopoly of university teaching, did not know anything else to teach." The educational conservatives held to the notion that there was an important distinction between "liberal" and "useful" education. To the conservatives the distinction was said to be one in which *liberal* meant where "nothing accrues of consequence beyond the knowing," and *useful* as being oriented toward "yield[ing] revenue." Gillispie, *supra* note 1, at 37, 38. Obviously there is an important value underlying each perspective. The difficulty lies in the rigidity of each belief system and the tendency of the conservatives to sneer at the validity of other approaches while the "reformers" fail to understand the critical

A nation's competitive power was not the only factor driving the changes. Higher education also reflected a steady evolution during the Eighteenth and Nineteenth centuries toward more democratic forms of government.¹⁹ While broadly based democratic education may indeed be "mass-produced intellectual pabulum" as Toynbee sniffed disdainfully, widespread access to university education inevitably communicates ideas, skills and fundamental principles to far larger groups of people.²⁰ These groups are presumably then able to recognize and criticize flaws within their society, creating pressure for change.²¹

This increased access to education was also fueled in part by the philosophical assumptions of the French Enlightenment, primarily arising from the belief that human progress, perhaps even perfection, could be gained through education. Humans were believed to be fundamentally good in their basic nature but confused and distorted in their actions by ignorance.²² Education

and vital core of classical studies. Either extreme is flawed. In any event the "masses" seem to have produced an enormous helping of "pabulum."

¹⁹ Faced with entrenched universities unlikely, unwilling and unable to adapt to the new needs, the English created new universities. From 1850, the nature of the public responsibility of British universities was seen as "to supply instruction, . . . require hard work, . . . grant degrees which would be trustworthy evidence of the holder's achievement and ability." The curriculum, it was felt, "should meet practical needs, and the graduate should be prepared to advance commerce, manufacturing, or agriculture, to enter public service or to be a . . . lawyer." By 1900, these new institutions had greatly increased the British capability for technical and scientific scholarship and research. *Id.* at 35-36. See also E.J. HOBBSAWM, *THE AGE OF REVOLUTION: 1789-1848* (1962).

²⁰ ARNOLD TOYNBEE, *A STUDY OF HISTORY* 292 (1947) (D.C. Somervell abr. of vols. 1-6). Peter Drucker has captured the dilemma:

Education for what, is the wrong question, a teacher would-or should-say. Education is for *somebody*, nor for *something*. The product of education is not knowledge or learning; it is not skills, ability or virtue, jobs or success, dollars or goods. It is always a person, who acquired knowledge or skills or virtue, who gets a job and an income or who produces goods. . . . The purpose of education in educated society therefore means first: What does an educated person have to be? What does he have to learn to achieve the most, make the greatest contribution, succeed the best and develop the furthest as a person?

PETER F. DRUCKER, *LANDMARKS OF TOMORROW* 137 (1965).

²¹ See ERIC HOFFER, *THE TRUE BELIEVER: THOUGHTS ON THE NATURE OF MASS MOVEMENTS* (1951). Hoffer comments on the function of the "man of words" in the success of a movement, as follows: "[I]mperceptibly the man of words undermines established institutions, discredits those in power, weakens prevailing beliefs and loyalties . . ." *Id.* at 120. Education provides the words and concepts essential to both preserving and destroying positions.

²² Brinton describes the Enlightenment's concept of nature:

Nature was to the Enlightenment wholly a benign concept . . . [T]he Nature of Newton as filtered down into the educated and half-edu-

was the means through which the blinders we all wear would be removed.²³ Ignorance and injustice would be driven away when we entered the enlightened world of reason and true knowledge. Unfortunate souls chained before the flickering shadows of the false reality of Plato's Cave would be shown the "light of reason," becoming fully rational and consequently close to perfection.²⁴ While this optimism seems more than a little naive today, its powerful, though flawed, premise still underlies much of our thought.²⁵

The opening of higher education to significantly greater numbers of people from "lower" social classes led to generations of class struggle and political change throughout Europe. The

cated was the orderly, untroubled, beautifully simple working of the universe *properly understood*. Once we understand his nature in human affairs, all we have to do is regulate our actions accordingly, and there will be no more unnatural [bad, irrational] behavior.

CRANE BRINTON, *IDEAS AND MEN: THE STORY OF WESTERN THOUGHT* 336 (1950) (emphasis added).

²³ It does this through the light of knowledge and in essence creates a new form of human. Ruth Anshen for example concludes: "[M]an is that being on earth who does not have language. Man is language." R.N. ANSHEN, *LANGUAGE: AN ENQUIRY INTO ITS MEANING AND FUNCTIONS* (1983). Jacob Bronowski suggests:

The tool that puts the human mind ahead of the animal is imagery. . . .
The symbol is the tool which gives man his power, and it is the same tool whether the symbols are images or words, mathematical signs or mesons.

Jacob Bronowski, *The Reach of Imagination*, in *THE NORTON READER* 170-72 (A. Eastman ed., 1977).

²⁴ It was an extreme premise. "There are two false routes by which the human mind seeks to fulfill the need for a deeper grasp on being. One is the way of scientism, which refuses to recognize the essential boundaries of scientific thought. The other is an undisciplined appeal to sheer feeling and purported irrational sources of insight." JAMES COLLINS, *CROSSROADS IN PHILOSOPHY: EXISTENTIALISM, NATURALISM, THEISTIC REALISM* 33 (1962).

²⁵ As Crane Brinton states:

[T]he most plausible explanation of the comparative failure of the ideals of democracy and progress lies in the overestimation their holders made of the reasonableness, the powers of analytical thought, of the average man today; that therefore all interested in man's fate should study with great care the way men actually behave, the relation between their ideals and their acts, their words and their deeds; finally, that this relation is not the simple, direct, causal relation most of us were brought up to believe it is.

BRINTON, *supra* note 22, at 26.

Hannah Arendt asked in *The Life of the Mind*, "[c]ould the activity of thinking as such . . . be among the conditions that make men abstain from evil-doing or even actually 'condition' them against it?" HANNAH ARENDT, *THE LIFE OF THE MIND: VOL. ONE/THINKING* 5 (M. McCarthy ed., 1978). The point I am stressing is not that a commitment to reason as a primary tool of insight and action is bad, but that we must be realistic about the tool's limits and capabilities.

social contradiction was profound. The changing economic system of the Industrial Revolution required educated people in large numbers, but European society had long rested on a foundation of servitude, class hierarchy, discrimination and authoritarian power.²⁶ Such a system not only does not need many educated people, it does not want many people to be educated. The system also wants only certain kinds of people to be educated because the free flow of ideas is dangerous to authoritarian societies, or even to societies that simply wish to remain static.²⁷ Ideas produce dissent, change and even revolution.²⁸ Societies of this nature therefore attempt to suppress knowledge by limiting access to learning or restricting the content of what the students are allowed to learn. Religious or secular, education is seen implicitly or explicitly as a form of propaganda to perpetuate dogma and political interests, not as a method to free the power of the human mind and spirit.²⁹

The Industrial Revolution altered a significant part of this dynamic, partly through national necessity and partly through the inevitable consequence of expanded access to learning. In England, throughout Europe and in the United States, scientists, inventors, managers, teachers, civil servants and engineers were needed in large numbers. Government sponsored universities—state universities—were created or transformed in an effort to

²⁶ See, e.g., HOBBSAWM, *supra*, note 19.

²⁷ *Id.* See DRUCKER, *supra* note 20, at 129 (discussing Soviet education). Jacques Ellul writes, "propaganda seeks to induce action, adherence, and participation—with as little thought as possible." JACQUES ELLUL, PROPAGANDA 180 (1965).

²⁸ See HOFFER, *supra* note 21. Among the concepts sought to be repressed are those that would define the injustice of the dominance of the controlling classes. When the language of injustice and justice enters the social dialogue it gives rise to dissent. This is because: "The universal and chief cause of . . . revolutionary feeling [is] . . . the desire of equality, when men think that they are equal to others who have more than themselves or, again the desire of inequality and superiority, when conceiving themselves to be superior they think that they have not more but the same or less than their inferiors." ARISTOTLE, THE POLITICS, Bk. V, ch. 2, *reprinted in* THE OXFORD TRANSLATION OF ARISTOTLE (W.D. Ross ed. 1921).

²⁹ Jacques Ellul suggests that given the increasing technical orientation of our educational system, the "intelligentsia will no longer be a model, a conscience, or an animating intellectual spirit for the group They will be the servants, the most conformist imaginable, of the instruments of technique." JACQUES ELLUL, THE TECHNOLOGICAL SOCIETY 349 (1967).

In too much of the intellectual world slogans and propaganda are being substituted for intelligent exchanges of positions, data and values. We often see those who disagree with us as enemies rather than sources of alternative conceptions and viewpoints. Slogans are "rallying symbols" that "in no sense describe what actually exists, yet they are taken—wishfully or desperately—to be generalizations or statements of fact." MAXINE GREENE, TEACHER AS STRANGER 70 (1983).

satisfy the needs.³⁰ This interaction between institutions of higher education and an expanding and educated middle class irreversibly altered the nature of those societies. One critical change was that considerations of merit now took their place along with those of ancestral bloodlines and privilege as criteria for opportunity, status and advancement. Once access to information, opportunity and merit-based selection and advancement is opened up, no society remains the same.³¹ It does not become perfect, but it does become different.

Oxford and Cambridge provide an example of academic rigidity. Critics of these two elite institutions have described their primary function as the preservation of upper class privilege.³² Long considered the "best" universities in the English speaking world, for centuries they were anti-intellectual bastions in which nothing new was pursued. In the Nineteenth Century, unable to

³⁰ Paul Farmer describes modern European assumptions about the primary nature of the university as being:

- (1) the university is properly subordinate to the state;
- (2) the university serves properly as the voice of the national spirit or the mind of the nation; and
- (3) the university is properly dedicated to the increase of knowledge as its principal task rather than to the mere perpetuation of an inherited store of knowledge.

Farmer, *supra* note 1, at 4. See *infra* notes 38-41 concerning the American land-grant universities.

³¹ Merit, fairness, equality, and distributive justice have been basic themes since Aristotle's *Politics* and *Nicomachean Ethics*. By now these themes are so deeply embedded in our belief structures that they are elements of our basic patterns of thought. Either because Aristotle was right or because his concepts dominated our educational and intellectual systems for centuries, themes he articulated resonate within us at deep levels of thought and feeling. Aristotle argued that distribution of a community's resources depended on individual merit, linking merit to distributive justice, fair treatment, and proportional equality as necessary conditions of a just state. When the state itself violates or allows and ignores violations of these basic tenets of fairness, justice, merit and equality it sows the seeds of its own corruption, transforming itself from what Aristotle described as a pure form of society to a corrupt version. See ARISTOTLE, *POLITICS, AND NICOMACHEAN ETHICS*, reprinted in *THE OXFORD TRANSLATION OF ARISTOTLE* (W.D. Ross ed., 1921) and *infra* notes 70-71.

³² As Gillispie has remarked:

The only important thing then coming out of the English universities was the English governing class, and it emerged less the product of education than of a sort of molding process in which the universities finished what the public schools had begun

So far as Oxford and Cambridge were dedicated to anything, it was to the perpetuation of themselves and of the type of graduate formed by their peculiar social environment—though even this was simply what they in fact did rather than a consciously formulated aim.

Gillispie, *supra* note 1, at 33. See also *infra* note 82 (the statement of purpose regarding Harvard University).

convince Oxford or Cambridge to alter their approach to teaching and research to help British society deal with the emerging scientific, political and intellectual challenges, the English created new universities with the vitality and ability to vigorously pursue scientific and technical knowledge. The English also opened higher education to many people who had been considered beneath the notice of Oxford and Cambridge.³³ These new universities allowed England to compete with the German technological and scientific machine that was fueled by the early Nineteenth Century expansion of German universities.³⁴

The new English universities opened doors of opportunity to students from social and economic backgrounds of a different sort than were acceptable to the "elite" institutions. This entire process produced a bitter debate in England concerning the proper purpose of a university education. The educational "conservatives" looked down upon the "liberals" who had the temerity to suggest that education ought actually be of some reasonably direct use.³⁵ This debate spilled over into American universities, reflected clearly in the *Yale Report of 1828*, which adhered to the conservative position of classical studies.³⁶ Many

³³ See generally *id.*; see also *supra* notes 17-19. Daniel Boorstin concludes: Of all a nation's institutions, its colleges and universities—next to its churches—are the most easily petrified. In England, for example, before the end of the nineteenth century the political system had been liberalized, the franchise broadened, the economy industrialized. But Oxford and Cambridge, the centers of academic prestige and power, remained relics whose customs could be understood only by a sympathy for the Middle Ages. The old school tie and the college blazer remain remnants of class snobbery.

DANIEL J. BOORSTIN, *THE REPUBLIC OF TECHNOLOGY* 61 (1978).

³⁴ See Farmer, *supra* note 1.

³⁵ See Gillispie, *supra* note 1. According to Artz:

In 1828, under the guidance of Bentham and Brougham, an important experiment in higher education was instituted through the opening of University College in London. Nonconformists and free thinkers, excluded from Oxford and Cambridge, were freely admitted. The curriculum ignored theology and emphasized science and history. Indeed, the new college was pervaded almost from the start with a spirit of scientific inquiry, found at this time only in the German and Scotch universities.

FREDERICK ARTZ, *REACTION AND REVOLUTION 1814-1832* 102 (Harper & Row ed., 1963).

³⁶ The influential *Yale Report of 1828* attempted to hold fast to the "mental discipline" of classical studies that characterized the more traditional English approach. The *Yale Report* argued that the "two great points to be gained in intellectual culture are the *discipline* and the *furniture* of the mind; expanding its powers, and storing it with knowledge." The way in which this end was accomplished was "to call into daily and vigorous exercise the faculties of the student." The means by which

American universities nonetheless chose to follow the more liberal model, emulating the departmental and collegial structure of German universities which sought to train managers, scientists and civil servants who would be of direct use to the German state in its efforts to achieve preeminence.³⁷

The process of expansion and experimentation in higher education continued following the Civil War as the United States occupied a continent. Land-grant universities were founded in the latter part of the Nineteenth Century in an effort to deliver high quality education to large masses of Americans. Science, engineering and agriculture became essential parts of the mission of many of these new universities as they altered the nature and scale of higher education in the United States.³⁸ The land-grant universities were radical experiments that were not universally popular with the intellectuals and academics of their time.³⁹

this was done was through the study of the traditional classical subjects rather than the "new knowledge" of science and business. Jeremiah Day & William Kingsley, *The Yale Report of 1828*, 1 AMERICAN HIGHER EDUCATION 278 (Richard Hofstadter and W. Smith eds., 1961); see also M.L. CLARKE, CLASSICAL EDUCATION IN BRITAIN: 1500-1900 (1959).

³⁷ There was substantial anti-German sentiment due to German involvement in the English wars against America. During the second decade of the nineteenth century, however, influential published descriptions of German universities stimulated excitement and subsequent travel to Germany by individuals who became leading American educators. The years between 1815 and 1876 saw significant Germanic influence on American education. The primary concepts derived from the German approach included the need for education for manual purposes including the education of farmers and artisans and the assumption that universities were not coherent colleges but clusters of professional schools and study of the higher arts and science. Pierson, *supra* note 1, at 63-73.

³⁸ State universities became increasingly common in the latter half of the nineteenth century, and the citizenry's expectation was that the universities would help one "to find a job and make money." *Id.* at 83. The 1870's witnessed the beginning of a vast university building effort in the United States. It was a movement of such intensity and diversity that Frederick Rudolph has described it as one in which "the developing universities revealed an appetite for expansion, a gluttony for work, a passion for growth which constituted one of their most fundamental characteristics." FREDERICK RUDOLPH, THE AMERICAN COLLEGE AND UNIVERSITY 343 (1962).

³⁹ The University of Chicago's Robert Hutchins was a bitter critic of the new approach to higher education, condemning many institutions as trade or finishing schools. Hutchins wanted to do away with what he perceived as vocationalism and to bring down the "fabric of anti-intellectualism masquerading as experience . . . and preparation for life." *Id.* at 480. For an expanded consideration, see ROBERT M. HUTCHINS, THE HIGHER LEARNING IN AMERICA (1936).

Hutchins was not alone. Significant opposition came from the older private colleges. Rudolph describes the actions of private schools as:

[O]ne of the shabbiest episodes in American academic history, not only because they were prepared to deny, on principle, to the new colleges the kind of support that so many of the older colleges had in

Yet it is hard to imagine what this nation would be like without the major state universities that were created as part of this experiment.⁴⁰

II. THE NEED FOR A NEW KIND OF UNIVERSITY

The Crises of American Society and the Nature of the University

The situation in which American society finds itself as it nears the Twenty-first Century is similar in several essential ways to other transformational periods in which fundamental change was either required or came onto societies with irresistible force. These periods include the emergence of universities in early Medieval Europe, Nineteenth Century England and Europe during the Industrial Revolution, and the United States following the Civil War when land-grant universities were founded as revolutionary experiments to serve the needs of an expanding America.⁴¹ The land-grant universities advanced our technological capabilities, trained large numbers of students in the skills most needed to facilitate and service an economy based on manufacturing and agriculture, and inculcated American citizens and new immigrants with a framework of democratic values.⁴² The European universities in the Nineteenth Century similarly became engines that powered scientific, economic and political progress.⁴³

Once again a new kind of university is needed to help American society create and take advantage of opportunities, address

the past found vital for survival, but also because they often combined the opposition to the new popular colleges with an unconcealed condescension.

RUDOLPH, *supra* note 38, at 254-55.

⁴⁰ Many major state universities were formed through the land-grant process. These include Michigan State, Ohio State, Iowa, Illinois, Arkansas, Wisconsin, South Carolina, Missouri, Dartmouth, Purdue, Vermont, Penn State, New Hampshire, Cornell, and almost sixty others. *Id.* at 258-59.

⁴¹ The land-grant colleges were made possible by the Morrill Federal Land Grant Act of 1862. The main focus was on agriculture and mechanical engineering. *See id.* at 247-63. Rudolph observed:

By the 1850's the industrial potential of the United States was as apparent as its agrarian past, and there emerged a growing awareness that a new age required new training and new preparation. What were lacking, however, were any certain institutional foundations upon which to erect programs of agricultural and mechanical training as well as any deeply held respect for expertness.

Id. at 248.

⁴² *Id.*

⁴³ *Id.*

needs and restructure information and knowledge. One fundamental difference is that, unlike past transformations of the university, resources will not allow the creation of new universities. The needed changes must come by adapting the functions, focus and priorities of existing universities.⁴⁴

Why is this re-invention of the university necessary? America is in trouble in nearly every way. We are engaged in a process that is reversing the progressive structure of society that has characterized this century and served as the guiding principle of the Enlightenment.⁴⁵ Rather than expanding access to opportunity and higher learning, we have begun to shrink that access, creating a new form of class-ridden and intensely discriminatory society in which participation in progress and opportunity is being increasingly denied to the majority of citizens.⁴⁶ The implications are profound and destructive.⁴⁷

The United States is a nation in crisis. Social, economic and moral crises are overwhelming the abilities of our leaders and the capabilities of our institutions. American cities are disaster areas with decayed, rotten cores. Violence, poverty, drugs, decay and homelessness are taken for granted.⁴⁸ Our school systems, primarily those in the cities but also many suburban and rural systems, are producing significant numbers of minimally capable graduates.

Our educational dilemma is multifaceted. On one hand, we are not providing enough extremely talented people at the high end of the intellectual scale. Our "best and brightest" must be challenged and nurtured; their creative power must be freed to

⁴⁴ DEREK BOK, *UNIVERSITIES AND THE FUTURE OF AMERICA* (1990) [hereinafter BOK, *UNIVERSITIES*]; DEREK BOK, *BEYOND THE IVORY TOWER: SOCIAL RESPONSIBILITIES OF THE MODERN UNIVERSITY* (1982) [hereinafter BOK, *BEYOND THE IVORY TOWER*]; RICHARD M. MILLARD, *TODAY'S MYTHS AND TOMORROW'S REALITIES-OVERCOMING OBSTACLES TO ACADEMIC LEADERSHIP IN THE 21ST CENTURY* (1991); *UNIVERSITIES UNDER SCRUTINY* (1987).

⁴⁵ See generally WILLIAM BENNETT, *THE DEVALUING OF AMERICA; THE FIGHT FOR OUR CULTURE AND OUR CHILDREN* (1992).

⁴⁶ See *id.* For statistics and projections concerning job growth in the next decade, see U.S. Dep't of Lab., *Outlook 2000*, U.S. DEP'T LAB. BULL. 2352, April 1990; U.S. Dep't of Lab., *Projections 2000*, U.S. DEP'T OF LAB. BULL. 2302, March 1988; U.S. Dep't of Lab., *Employment Projection for 1995: Data and Methods*, U.S. DEP'T LAB. BULL. 2253, April 1986.

⁴⁷ See, e.g., Jason DeParle, *D.C.'s black men swept up by criminal justice system*, *THE PLAIN DEALER* (Cleveland), April 19, 1992, at 12-A; Michael Getler, *Britain's Lost Generation*, *WASHINGTON POST*, Sept. 3, 1984 (Nat'l Weekly Ed.), at 17.

⁴⁸ Dana Canedy, *Heading for the suburbs*, *THE PLAIN DEALER* (Cleveland), April 19, 1992, at 1-E.

innovate.⁴⁹ They must not be hemmed in or shunted into unproductive dead-ends that limit their ability to contribute.⁵⁰ Yet most of our traditional institutions, including universities, are living in the past and operating according to outmoded institutional forms and disciplines.⁵¹

Nor are we doing a sufficient job in the middle range of talent that is critical to the operation of any human system. Too many students are being allowed to slide uncontested through the educational system, learning skills and information that are obsolete or often not learning much at all. When these graduates are given significant responsibilities, they are unprepared and woefully inadequate. Unprepared graduates bring down the institutions within which they work to the lowest denominator—a level far removed from excellence.⁵²

⁴⁹ See, e.g., HUNTER LEWIS & DONALD ALLISON, *THE REAL WORLD WAR: THE COMING BATTLE FOR THE NEW GLOBAL ECONOMY AND WHY WE ARE IN DANGER OF LOSING* (1982); Brian Dumaine, *Closing the Innovation Gap*, FORTUNE, December 2, 1991, at 56; *Education/Special Report*, FORTUNE, October 21, 1991, at 114, 180; Barbara Lerner, *How Shakespeare Can Save Our Kids*, NATIONAL REVIEW, Jan. 20, 1992, at 30; Brenton R. Schlender, *How Sony Keeps the Magic Going*, FORTUNE, February 24, 1992, at 76.

⁵⁰ See LESTER THUROW, *THE ZERO SUM SOCIETY* (1980). Drucker describes what ought to occur but seldom does.

To be an effective person in an educated society everyone, whatever his work, needs certain foundations. He needs a foundation in the knowledge of man, his greatness and his wretchedness, his personality, his history, his society. He needs a foundation in the knowledge of systematic inquiry that we call "science"—its methods, its history, its basic assumptions and its major theories. He needs a minimum of competence in using the skills of imagining, analyzing, formulating, interpreting and conveying *thought* which we call "language"—and which include, of course, mathematics. And he needs the skills of imagining, perceiving, formulating, interpreting and conveying *experience* which we call the arts. But he also needs to be able to strive for excellence in one particular area. This means specialization, since one cannot attain excellence in more than one small area. It means education for contribution in work, that is practical education.

DRUCKER, *supra* note 20, at 142.

⁵¹ For suggestions concerning the needed directions, see, e.g., KENICHI OHMAE, *THE BORDERLESS WORLD: POWER AND STRATEGY IN THE INTERLINKED ECONOMY* (1990); Special Report, *What I Want U.S. Business to do in '92*, FORTUNE, December 30, 1991, at 24; Alex Taylor III, *Can GM Remodel Itself?*, FORTUNE, January 13, 1992, at 26. See also DRUCKER, *supra* note 20, at 43 ("We do not, so far, teach specialized subjects in contemplation of the general. We will teach them as skills rather than as knowledge, stress yesterday's solutions rather than tomorrow's problems . . .").

⁵² This is, of course, what Toynbee and Hutchins feared. For a discussion of their thoughts, see *supra* notes 20, 39 and accompanying text. See, e.g., Louis S. Richman, *America's Tough New Job Market*, FORTUNE, February 24, 1992, at 52 (emphasizing the competitive advantage of the skilled and adaptable graduate); Lee Smith, *Are You Better Off?*, FORTUNE, at 38 (noting that economic statistics cannot capture

A third critical problem is the negative systemic energy generated by the millions of educationally disabled students that our schools are churning out. Hordes of dysfunctional illiterates and antisocial renegades are spilling from our schools into society, most of them moving into dead-end, low-paying jobs or not working at all.⁵³

Our economic base is in shambles, with the future more bleak than our leaders either understand or are willing to tell us. Manufacturing, service and agricultural jobs are being eliminated by automation, computers and robotics.⁵⁴ We seem unable to compete with Japan and Korea, nations on which we gazed with arrogant contempt only twenty years ago. Once it overcomes its structural and political difficulties, the new integrated European

the "irrepressible spirit" of the middle class to survive and adapt). For many young people in American cities the answer is not contained in proposals to provide low-paying service jobs. See, e.g., Thomas Diemer, *Glenn told jobs not answer to street crime*, THE PLAIN DEALER (Cleveland), April 2, 1992, at 3-A. Curtis Artis, a former drug dealer told the Senate's Government Affairs Committee he was not interested in flipping hamburgers or sweeping streets for minimum wages. "I wanted money-money, cars and clothes - the whole nine yards. . ." Artis reported he earned \$300,000 over a five month period selling drugs. Artis stated: "A lot of people they don't want manual labor-type jobs. They want to use their heads. You have to make it interesting for a young person." *Id.*

⁵³ See generally KEN AULETTA, THE UNDERCLASS (1983); WILLIAM J. WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987). But for future needs, compare 1992 Career Guide: Best Jobs for the Future, U.S. NEWS & WORLD REPORT, November 11, 1991, at G2, with *A Patchy Safety Net*, THE ECONOMIST, January 18, 1992, at 23. The jobs that allow or require American workers to "use their heads" take years of education and most of our educational system does not focus on developing the skills in any event. We are at a revolutionary point where our defects and trends are largely "out of synch" with our needs and capabilities. Facile polemics will not provide the answers. We must apply our best minds and institutional resources to addressing this challenge or we will fail as a society.

⁵⁴ There are many reasons for our economic crisis. Stupidity, greed, shortsightedness and inept management deserve mention. Lack of investment in innovative business is one of the most critical reasons. See Dentzer, *America's Investment Crisis*, U.S. NEWS & WORLD REPORT, February 24, 1992, at 53. This can be seen in the beginnings of a movement among black business leaders to encourage innovative and entrepreneurial activities in that community. See Oscar Suris, *Black Economy Critical*, THE TIMES-PICAYUNE (New Orleans), April 4, 1992, at C-2 ("Disappointed with the welfare system and frustrated by legal challenges to set-aside programs, some black people are embracing entrepreneurship as their best tool against economic inequities that have kept some of them from acquiring wealth."). David Bazelon warned us against the consequences of a "paper economy" thirty years ago. He concluded that if the number of "paper-rentiers" were not limited but continued to grow, the U.S. would become "a nation of 200 million well-fed house-servants to a few million professional superconsumers." DAVID BAZELON, THE PAPER ECONOMY 344 (1963). It is rapidly becoming worse than Bazelon feared as millions of people lack food, adequate housing, medical care, education and jobs.

economy will create a significant economic force with which we may well be uncompetitive. If our universities do not help to educate us for competitiveness and economic development, we could easily become a satellite for the coherent economic monoliths that will rise within Europe and already exist throughout Asia.⁵⁵

The difficulties do not end there. The financial system of the United States is fragile and vulnerable.⁵⁶ Although we hope to avoid its collapse, the economic toll that the mismanagement, theft and stupidity of the 1980's have already exacted is immense.⁵⁷ A decade of theft and incompetence was blithely ignored, even facilitated, by our political leaders.⁵⁸ This represents grossly negligent, and often criminal, activity far beyond the fabled levels of the Colombian drug trade or other forms of organized crime.⁵⁹

It is not simply the financial threats and costs created by the S&L scandal, even though that alone will cost Americans more than \$500 billion in tax dollars.⁶⁰ Many United States banks are also troubled, with politicians already beginning their ritualistic dances designed to prepare us for the next disaster.⁶¹ Insurance companies are troubled and beginning to fail.⁶² Pension funds, and therefore the Pension Benefit Guarantee Corporation, are

⁵⁵ See, e.g., *Special Report/Pacific Rim*, FORTUNE, October 7, 1991, at 118, 165; *Europe/Special Report*, FORTUNE, December 2, 1991, at 136, 172. An interesting analysis is offered, by Richard Rosecrance, *Must America Decline?*, THE WILSON QUARTERLY, Autumn 1990, at 67.

⁵⁶ See Louis S. Richman, *Getting America to Save More*, FORTUNE, December 16, 1991, at 59.

⁵⁷ See IRENE GLASSER, MORE THAN BREAD: ETHNOGRAPHY OF A SOUP KITCHEN (1988). See also *infra* notes 66, 68, 69, 74, 94.

⁵⁸ Alin Hamlin & Roger Hillyard, *Congress Napped While S & L's Were Sapped*, 76 BUS. & SOC'Y REV. 10 (1991).

⁵⁹ There are connections between the S & L's and organized crime. Many helped launder illicit gains. Some suspect an organized conspiracy to drain the assets of the S & L's.

⁶⁰ Catherine England, *How Regulations Made Thrifts Spendthrifts*, 76 BUS. & SOC'Y REV. 4 (1991).

⁶¹ BANKING INDUSTRY IN TURMOIL: A REPORT ON THE CONDITION OF THE U.S. BANKING INDUSTRY AND THE BANK INSURANCE FUND, REPORT OF THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE OF THE COMM. ON BANKING FINANCE AND URBAN AFFAIRS, 101ST CONG., 2D SESS. (Comm. Print 1990). See also *Banking Reform in the Dirt*, THE ECONOMIST, Nov. 9, 1991, at 91. The problems are not limited to the U.S. See, e.g., *Japanese Banks: Deep in Bad Debt*, THE ECONOMIST, Nov. 2, 1991, at 70.

⁶² Roger F. Cox, *Protecting Against Insurer Insolvency*, 13-MAY PALAW 29, WESTLAW, May, 1991 (Pa. Bar. Ass'n); Robert D. Haase & Gregory C. Krohm, *The Ailing Health Insurance Industry*, 20-WTR BRIEF 15, WESTLAW, Winter 1991.

threatened by decades of chronic, deliberate underfunding and corporate skimming of illusory "surpluses."⁶³ The national debt is well in excess of \$3 trillion with the annual cost of servicing that debt well up into the hundreds of billions of dollars.⁶⁴ This debt load is creating an intolerable and unproductive burden on our economy. The tragedy is compounded by the fact that much of America's public debt is held by individuals and institutions located outside the United States. This means that a considerable part of the money paid out as interest on the federal debt does not even remain in this country for purchases or reinvestment.⁶⁵

The annual cost of health care in the United States is now over \$800 billion, but 40,000,000 people are without access to care.⁶⁶ The indecent profits being raked in by health care professionals siphon an immense segment of increasingly scarce productive capital away from investment, consumer spending and economic development.⁶⁷ Current proposals to create a national health care plan without dealing with the excesses of the health care industry will place back-breaking pressure on a national budget that is already out of control. As the American population ages and the health effects of decades of exposure to industrial and environmental carcinogens become manifest the costs of health care will explode more than in the 1980's. The compensation paid to chief executives of American corporations is far beyond that earned by the executives of any other nation, and is being paid when the track records of most United States corporations are far from admirable.⁶⁸

⁶³ Keating, *Pension Insurance, Bankruptcy and Moral Hazard*, 191 WISC. L. REV. 65; Note, *Who Should Pay When Federally Insured Pension Fund Go Broke?: A Strategy for Recovering from the Wrongdoers*, 65 NOTRE DAME L. REV. 308 (1990). Local Governments are also getting into the act. See Deutschman, *The Great Pension Robbery*, *FORTUNE*, January 13, 1992, at 76.

⁶⁴ DONALD R. STABILE & JEFFREY A. CANTOR, *THE PUBLIC DEBT OF THE UNITED STATES: AN HISTORICAL PERSPECTIVE 1775-1990* (1991); see also *A Wimp of a Budget*, *THE ECONOMIST*, February 1, 1992, at 23.

⁶⁵ See STABILE & CANTOR, *supra* note 64, at 186.

⁶⁶ See generally, DAVID HABER, *HEALTH CARE FOR AN AGING SOCIETY: COST CONSCIOUS COMMUNITY CARE AND SELF-CARE APPROACHES* (1989); *THE MEDICAL COST-CONTAINMENT CRISIS: FEARS, OPINIONS, AND FACTS* (Jack D. McCue ed., 1989); see also Janie Castro, *Condition Critical*, *TIME*, November 25, 1991, at 34 (describing ten approaches to cure our health care system crisis).

⁶⁷ KAREN DAVIS, ET AL., *HEALTH CARE COST CONTAINMENT* (1990); Gordon Witkin, et al., *Health Care Fraud*, *U.S. NEWS & WORLD REPORT*, February 24, 1992, at 34 (Reporting that "[u]p to 80 billion is stolen each year from taxpayers and insurers. Bolder scams arise all the time, and little is done to stop them.").

⁶⁸ See also Peter Passell, *CEO's 7-digit salary symptom of deeper ills*, *THE PLAIN*

The crises Americans must solve are not only in the areas of finance, health care and economic development although there is a relationship between the redistribution of our resources to already well-off Americans and the rapid intensification of extremely serious social problems.⁶⁹ The “rich get richer, poor get poorer” pattern that began in the 1980’s is precisely the kind of social condition Aristotle warned against in analyzing the pure and corrupt forms of government and the inevitable consequences of the specific corrupt form he defined as oligarchy.⁷⁰ Aristotle also warned that a sense of fairness, and of justice being served, were essential elements of a decent society.⁷¹ Without those perceptions being held by citizens, the members of political societies predictably lack the will to cooperate. The social glue is then not strong enough to prevent a weakening or even disintegration of the political system. This weakening appears to be reflected in the fact that one of our most fundamental crises is the rapid disintegration of the social bonds Americans long took for granted. Racial hostility—white against black, black against white, and every other discriminatory variation—is increasing.⁷²

While real gains have been made for many of our minority citizens, many are also being left behind.⁷³ It is not only an issue

DEALER (Cleveland), April 21, 1992, at 16-F; Martin Sabo, *Congress Can Put Executives on a Diet*, NEW YORK TIMES, March 7, 1992, at A15.

⁶⁹ *The Rich Get Richer*, NEW YORK TIMES, April 19, 1992, at E10; Matthew Cooper & Dorian Friedman, *The Rich in America*, U.S. NEWS & WORLD REPORT, November 18, 1991, at 34; Sylvia Nasar, *The 1980’s: A Very Good Time for the Very Rich*, NEW YORK TIMES, March 5, 1992, at A1.

⁷⁰ Aristotle described three true forms of government (kingly rule, aristocracy, and constitutional government) and three perversions (tyranny, oligarchy and democracy). He concluded that the distinguishing factor was that the “true forms” sought to serve the common good of all citizens while the “perversions” purposely benefitted specific classes. In the real world, democracy was considered the most fair because it more closely approximated a true form of government, and its abuses would be less centralized. ARISTOTLE, *THE POLITICS*, *supra* note 28, at Bk. III, Ch. 7.

⁷¹ Aristotle concludes “justice is the bond of men in states, for the administration of justice, which is the determination of what is just is the principle of order in political society.” *Id.* at Bk. I, ch. 2. John Rawls continues this theme in describing “justice as fairness.” JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

⁷² See BENNETT, *supra* note 45, at 178-202 (author notes increased racial hostility in *Race and the New Politics of Resentment*, chapter 6); Lawrence Elder, *Must blacks consider America a combat zone?*, THE PLAIN DEALER (Cleveland), April 20, 1992, at 7-C; see also ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* (1992); STUDS TERKEL, *HOW BLACKS AND WHITES THINK AND FEEL ABOUT THE AMERICAN OBSESSION* (1992).

⁷³ THE UNDERCLASS-HEARINGS BEFORE THE JOINT ECONOMIC COMMITTEE, CONGRESS OF THE UNITED STATES, 101ST CONG., 1ST SESS. (1989); MICHAEL HARRINGTON, *THE NEW AMERICAN POVERTY* (1984); KEVIN PHILLIPS, *THE POLITICS OF RICH*

of race, however, but increasingly one of shrinking opportunity for nearly all. The belief in progressive evolution toward a utopian society, i.e., faith in the American Dream and the vision of progress, has been a fundamental part of this society for more than two hundred years. We may now be witnessing the death throes of the American Dream, the end of progress. A new kind of society is emerging that is meaner and more dismal than the one in which most of us were raised.

Progress depends on the raw energy and vitality of youth, but a generation of young people is being relegated to lives of ignorance, pointlessness, violence, degradation and poverty.⁷⁴ Many of those young people are becoming a cancer not only to themselves, but to people living in their neighborhoods. We are harvesting the consequences of the deeply rooted, virulent racism and class discrimination that dominates America.

Many of the young people who are part of this abandoned generation will not only be a direct threat to the innocent Americans they endanger but an immense and increasing drain of resources and political energy from the society that caused and allowed them to be created.⁷⁵ It is not a zero-sum game. In a complex and sophisticated economic and social system, denial of opportunity and loss of the potential talent and energy of an individual does not produce a zero effect, but a destructive double negative. We not only do not gain from an individual's or classes' contributions to the expansion of social goods that would have occurred if our institutions were just and fair in terms of access and nurturing, but must also pay for the harms caused and the resulting costs of social programs. The payments take varied forms, including financial entitlements, medical care, rehabilitation and remedial programs, poor employment performance and lack of positive work ethic, and the costs of law enforcement and

AND POOR: WEALTH AND THE AMERICAN ELECTORATE IN THE REAGAN AFTERMATH (1990).

⁷⁴ THE STAFF OF THE CHICAGO TRIBUNE, *THE AMERICAN MILLSTONE: AN EXAMINATION OF THE NATION'S PERMANENT UNDERCLASS* (1986) [hereinafter *THE AMERICAN MILLSTONE*]; Cheryl Jackson, *Conference weighs strategies to reach urban black youth*, *THE PLAIN DEALER* (Cleveland), April 16, 1992, at 9-B; KRISTEN BAIRD, *Young families struggling as child poverty soars*, *THE PLAIN DEALER* (Cleveland), April 15, 1992, at 3A.

⁷⁵ There are answers, but we lack the moral and political will to act. *Kids blossom at Hawaii schools*, *THE PLAIN DEALER* (Cleveland), April 13, 1992, at 5-C; see also BENNETT, *supra* note 45; Toch, et al., *Schools That Work*, *U.S. NEWS & WORLD REPORT*, May 27, 1991, at 58.

prisons.⁷⁶

No one institution, including universities, can hope to provide solutions for America's immense and dangerous problems. The schools have long been unfairly shouldered with the responsibility of remedying the problems of American society. It is by now clear that, as presently constituted, the universities are not up to the task.⁷⁷ Networks and problem-solving partnerships must be created throughout this nation's key institutions. Universities must play a significant role in helping to create the needed visions and facilitating the partnerships.⁷⁸ To a significant degree, it is a responsibility earned by default because no other American institution seems either interested in or capable of the task.⁷⁹

Many of the steps will be painful and controversial. Each will be resisted vigorously by vested interests. The moral courage and wisdom required to change the way universities and related institutions function will be great. But there is no workable alternative to our making the effort to revolutionize the university and, by doing so, revolutionizing society. Social theorist Harlan Cleveland has put our situation as follows: "It is not clear whether we are experiencing a period in which conditions will become worse before they get better, or worse before they get worse!"⁸⁰ Universities have major roles to play in ensuring that the conditions of this society become better, fairer and more just.

The Leadership Mission of Universities

The quality of our leadership in all critical areas—universities, schools, government, business, social action—will be a critical factor in determining whether our future becomes better or worse. So will be the abilities of our workforce and our willingness to develop and implement cooperative strategies and solutions.⁸¹ Unfortunately, the comic strip character Pogo seems to have been correct in saying, "We have met the enemy and he is

⁷⁶ See BENNETT *supra* note 45, at 92-121 (the author has appropriately named chapter 3 *The American Nightmare*); Marriott, *Another stereotype shattered*, THE PLAIN DEALER (Cleveland), April 1, 1992.

⁷⁷ BENNETT, *supra* note 45, at 92-121.

⁷⁸ BOK, *BEYOND THE IVORY TOWER*, *supra* note 44.

⁷⁹ Donald L. Bartlett & James B. Steele, *Congress conjures, middle class collapses*, THE PLAIN DEALER (CLEVELAND), APRIL 19, 1992, AT 1-C.

⁸⁰ I was present at a speech in the early 1980s at which Cleveland made this remark.

⁸¹ See Sharon Broussard, *State superintendent of schools pushing change*, THE PLAIN DEALER (Cleveland), April 1, 1992, at 2-B ("The World is changing rapidly around.

us!" While our crises call for skilled leadership possessing vision and integrity, Americans settle for incompetent, venal and limited people at all levels of government. The empty posturings of television presidents and presidential pretenders occurs while the system is crumbling about us.

Universities have long sought to train a leadership core for their societies.⁸² They must now accept the task of training new kinds of leaders. The skills, vision and knowledge that the new generation of leaders requires transcend anything we could have demanded or expected to this point.⁸³ To achieve this task, universities must not only rethink how they organize the disciplines of knowledge, but invent new areas of knowledge that better reflect the world and its systems.⁸⁴ Universities must become leaders in reorganizing education into structures that prepare a new generation to solve problems on levels far beyond our fragmented and often simplistic efforts.⁸⁵

us, but we're not getting better fast enough to meet the demands of our economy.'").

⁸² The founders of Harvard understood the role higher education could play in the preservation and inculcation of desired values. This was to be a recurrent theme in American higher education.

A college develops a sense of unity where, in a society created from many of the nations in Europe, there might otherwise be aimlessness and uncontrolled diversity . . . a college is a support of the state, it is an instructor in loyalty, in citizenship, in the dictates of conscience and faith. A college is useful; it helps men to learn the things they must know in order to manage the temporal affairs of the world; it trains a legion of teachers.

RUDOLPH, *supra* note 38, at 13.

⁸³ See DRUCKER, *supra* note 20; OHMAE, *supra* note 51. *America and Japan: Forget Pearl Harbour*, THE ECONOMIST, November 30, 1991, at 21. Some critics are attempting to define paths of action. See, e.g., H. DALY & J. COBB, JR., FOR THE COMMON GOOD: REDIRECTING THE ECONOMY TOWARD COMMUNITY, THE ENVIRONMENT, AND A SUSTAINABLE FUTURE (1989); ROBERT REICH, THE NEXT AMERICAN FRONTIER (1983).

⁸⁴ See, e.g., ABRAHAM MASLOW, THE FARTHER REACHES OF HUMAN NATURE (1971). Maslow describes the limits on knowledge he perceived in his own discipline:

In the thirties I became interested in certain psychological problems, and found they could not be answered or managed well by the classical scientific structure of the time (the behavioristic, positivistic, "scientific," value-free mechanomorphic psychology). I was raising legitimate questions and had to invent another approach to psychological problems in order to deal with them. This approach slowly became a general philosophy of psychology, of science in general of religion, work, management and now biology. As a matter of fact, it became a *Weltanschauung*.

Id. at 3.

⁸⁵ My own work is focusing increasingly on the concepts of strategy and strategic methodology based primarily on the works of Sun Tzu and Shinmen Musashi. As

III. THE TRAGEDY OF AMERICAN SOCIETY

Almost thirty years ago, Lyndon Johnson launched the "Great Society's" War on Poverty. Many of us who grew up in the 1960's were motivated by John F. Kennedy's words: "Ask not what your country can do for you—ask what you can do for your country."⁸⁶ Johnson and Kennedy created such institutions as VISTA (Volunteers in Service to America), the Peace Corps, the Office of Economic Opportunity, and the Community Action Program. The Legal Services Corporation was seen as an integral element of a generation committed to achieving real breakthroughs in the quality of civil rights and social justice in America.

John Kennedy is dead, his brain shattered by an assassin's bullet. He was soon followed by Martin Luther King, Jr. and Bobby Kennedy. Since the unfolding of this tragic trilogy, America has never been the same. We have become increasingly afraid, dark, self-centered, selfish and hesitant. We have withdrawn into ourselves in a way that was begun by Vietnam, fueled by OPEC and runaway inflation, sustained by the greed and excess of the Reagan years, and sealed in the 1990's by the fears of job loss, debt and a shrinking economy that is leaving millions of people without opportunity and hope. As opportunity has shriveled, we have learned to hate each other in the ugliest and most vicious of ways.⁸⁷ The dream of progress remains a flickering vision for many Americans but the reality may be that progress as we knew it—an expanding wave of opportunity steadily bringing

odd as resort to Oriental classics on military and martial arts strategies seems at first impression, I find it helps to create a methodology that both provides a penetrating clarity and a coherent and comprehensive framework for thinking and deciding. It is precisely the kind of method that allows us to visualize desired ends and understand obstacles, paths of action, behavior, motivation and the need to be flexible and adaptable.

⁸⁶ The more complete quote:

The energy, the faith, the devotion which we bring to this endeavor will light our country and all who serve it—and the glow from that fire can truly light the world.

And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country.

My fellow citizens of the world: ask not what America will do for you, but what together we can do for the freedom of man.

John F. Kennedy's Inaugural Address (January 20, 1961) in DOCUMENTS AND TEXTS 1382-83.

⁸⁷ BENNETT, *supra* note 45; HACKER, *supra* note 72; TERKEL, *supra* note 72; Isabel Wilkerson, *Fear written in black and white at Olivet*, THE PLAIN DEALER (Cleveland), April 15, 1992, at 1-C.

more and more people into the mainstream of American life—may be dead.

Healing the Wounded and Creating Opportunity

Vietnam is not the only war the United States has lost. Many Americans living in the nation's aging cities in 1992 are on the losing side in the War on Poverty. They have been taken prisoner without trial and sentenced to life in the urban concentration camps of Harlem, Washington, D.C., Miami, Detroit, New Orleans, Philadelphia, Newark, Cleveland, New York, Los Angeles, Atlanta, Chicago and Houston. For the poor in American cities, life is much like growing up black in South Africa. They are the casualties of the failed War on Poverty. They are increasingly being joined by rural and suburban whites who are finding their lives disintegrating about them and have descended into poverty at a time when funding for social programs is being slashed.⁸⁸

Universities must help Americans recapture the spirit of selfless civic contribution and problem solving. Dealing creatively with crisis and change will not be enough. Universities must also help us learn how to heal the wounded. As part of the healing process, universities must help Americans learn to identify, create, nurture, and seize opportunities for growth and development. Facilitation of the healing process will involve not only teaching and research on the part of university faculty and students, but development of strategies to help restructure our public and private institutions so they work more effectively.⁸⁹ This mission of creating opportunity is integral to the first two. If all universities do is help us learn how to deal with immediate crises and heal our social casualties, many of our social and economic systems will still disintegrate.⁹⁰ It will simply take a bit longer.

⁸⁸ Harrington, *supra* note 73. See also CHARLES HOCH & ROBERT A. SLAYTON, *NEW HOMELESS AND OLD: COMMUNITY AND THE SKID ROW HOTEL* (1989). We are now attempting to render them more invisible. See Amitai Etzioni, *Streets Meaner for Homeless*, *THE PLAIN DEALER* (Cleveland), March 24, 1992, at 3-C.

⁸⁹ See, e.g., PETER F. DRUCKER, *MANAGING THE FUTURE: THE 1990'S AND BEYOND* (1992); RUSHWORTH M. KIDDER, *REINVENTING THE FUTURE: GLOBAL GOALS FOR THE 21ST CENTURY* (1989); RUSHWORTH M. KIDDER, *AN AGENDA FOR THE 21ST CENTURY* (1987) [hereinafter *KIDDER, AN AGENDA*].

⁹⁰ Crisis management is of course essential, but we need to make progress on rebuilding our economic system. If we do not create an economic Renaissance we will unravel as a political community with the final result of becoming a community only of force rather than justice. Force is always latent in any political system, but there are degrees and concerns about the purposes and consequences of its use.

Universities must help us develop the knowledge and then guide us in learning how to move to the next phase of economic, political and social development.

The Global Kondratiev Wave

Joseph Stalin once instructed a brilliant Marxist economist named Nikolai Kondratiev to use economic methodology to prove scientifically the inevitable death of Capitalism.⁹¹ Unfortunately for his own future, Kondratiev proved instead that Capitalism was not terminal, at least not yet, but experienced fundamental transformational cycles approximately every sixty years.⁹² These Kondratiev transformations had unpredictable nonlinear outcomes in which the quality of society itself was altered, not simply changed in predictable directions as a matter of degree.⁹³ Kondratiev spent the remaining years of his life in Siberia, but his research eventually became accessible to Western economists who honored him by naming the cycles "Kondratiev Waves."

American society, in fact global society, is in the midst of an interacting series of Kondratiev Waves. Americans must redefine their educational and leadership strategies to understand and develop the kinds of knowledge and institutional forms needed to survive and excel in this altered and rapidly shifting context. The ability to focus clearly, think flexibly and creatively, and act quickly are skills that are essential to coping with this challenge. Very little of our education and research is directed toward these qualities. Unless we are successful in redirecting our education and research, our social problems will increase and our patchwork solutions will at best be temporary bandaids on hemorrhaging arteries.

⁹¹ As Herb Kleinman stated:

Maybe the current recessionary cycle is not a cycle. Slowly, this disturbing realization is creeping into the American Psyche. The U.S. industrial locomotive that has pulled our economic train since World War II is not stalling just momentarily but perhaps permanently. Clearly this bleak outlook runs counter to a deeply embedded confidence in perpetual U.S. dominance.

Herb Kleinman, *U.S. needs enterprise not back-slappers*, THE PLAIN DEALER (Cleveland), April 27, 1992, at 3-C.

⁹² Paul McCracken, *Will The Third Great Wave Continue?*, THE AMERICAN ENTERPRISE, March/April 1991, at 52.

⁹³ James Michaels, et al., *Echoes from a Siberian prison camp*, FORBES, November 9, 1991, at 164; Charles Stokes, *A Long Range View Based On The Kondratieff Cycle*, BUSINESS ECONOMICS, January 1980, at 20; *Bad News From Kondratieff?*, FINANCIAL WORLD, July 15, 1979, at 50.

The United States is experiencing a transformation being driven not only by factors of technological change, but by powerful interplays of political, social and economic forces.⁹⁴ America's economy and its political system are being battered, cracked, undermined and transformed by these changes.⁹⁵ Currents of these global Kondratiev Waves have been sweeping throughout the world for more than a decade, and their confluence is threatening to inundate the United States. Rather than receding, their intense force and power are creating even greater pressures on our society. Signs of radical reordering are obvious in the accelerated restructuring of global society, the nature of productive economic activity and the redistribution of power and wealth.⁹⁶

In the midst of this transformation of our economic system, we have diverted vast amounts of our financial resources to false areas of economic activity. These areas include overvalued real estate, junk bonds and the emergence of a tissue-thin paper economy based on merger and acquisition activity that undermined true wealth creation and productive development.⁹⁷ These phenomena created a short-term illusion of economic growth during the 1980's. This illusion was a credit-driven "South Sea Bubble," an unsustainable economic state that failed to create the foundation needed for long-term economic health.⁹⁸ Instead, the phony ideologies of Reaganomics deceived Americans about the soundness of our economic system and resulted in severe damage to the American economic, social and

⁹⁴ See, e.g., *Outlook bleak for unemployed, report says*, THE PLAIN DEALER (Cleveland), Wednesday, April 1, 1992, at 1-F; THE AMERICAN MILLSTONE, *supra* note 74; DRUCKER, *MANAGING THE FUTURE*, *supra* note 89; Emert, *The real face of unemployment*, THE PLAIN DEALER (Cleveland), March 13, 1992, at 5-C; PAUL KRUGMAN, *THE AGE OF DIMINISHED EXPECTATIONS: ECONOMIC POLICY IN THE 1990s* (1990); OHMAE, *supra* note 51; PHILLIPS, *supra* note 73.

⁹⁵ PHILLIPS, *supra* note 73.

⁹⁶ See generally, AURELIO PECCEI, *ONE HUNDRED PAGES FOR THE FUTURE* (1981); KIDDER, *AN AGENDA*, *supra* note 89.

⁹⁷ See DRUCKER, *supra* note 20, at 159-62.

⁹⁸ See PHILLIPS, *supra* note 73. The early 18th century South Sea Bubble is considered the most serious financial and political scandal in England's history. Stock manipulation, lies and heated speculation in the South Sea Company led to a financial collapse that devastated rich and poor alike and threatened the throne. For its history, see JOHN CARSWELL, *THE SOUTH SEA BUBBLE* (1960). We have outdone the South Sea Company during the 1980's through the combination of mergers, acquisitions and leveraged buyouts, fraud and negligence in the S & L industry, and the failure to reinvest in productive activity, instead skimming the profits from the Reaganomics pyramid-scheme.

political systems.⁹⁹ This occurred at the same time that our society was being naturally transformed during the Kondratiev cycle. We are, therefore, experiencing an incredibly serious set of conditions and contradictions with fundamental and disastrous implications.

A little more than ten years ago, George Gilder wrote a sometimes brilliant, frequently absurd, but always provocative book that was proclaimed as the bible of Reaganomics and Supply-Side economics.¹⁰⁰ Gilder's *Wealth and Poverty* can easily drive anyone of even minimally liberal persuasion berserk. But Gilder did offer important insights into the basic idea of wealth creation, the role of the individual, and the importance of developing opportunity and nurturing a society's "human capital."¹⁰¹ Gilder understood that wealth is not produced by shell games and shams, but by innovation, efficiency and investment in a productive economic base.¹⁰²

Although they espoused Gilder's goals, Reaganomics and "Bushonomics" instead created a cynical pyramid scheme that has redistributed vast sums of money from less advantaged groups to well-to-do people.¹⁰³ This sham has produced no real gains for our system, as opposed to benefits for fortunate individuals who expanded their personal wealth, and many harmful consequences. One consequence is missed opportunity. We have unproductively and profligately wasted wealth while allowing the system of true wealth production to erode. The redistributed resources have gone to the wealthy while poverty has skyrocketed and our streets are filling with homeless, many of whom lived productive middle-class lives before their breathtakingly rapid descent into poverty.¹⁰⁴

Obstacles to Redefining the University

This transfer of wealth from poor and middle-class to the well-to-do has created injustices that are consuming the core of our society. The poor are being deprived of food and shelter

⁹⁹ PHILLIPS, *supra* note 73.

¹⁰⁰ GEORGE GILDER, *WEALTH AND POVERTY* (1981).

¹⁰¹ *Id.*; see also Myron Magnet, *Meet the New Revolutionaries*, *FORTUNE*, February 24, 1992, at 94.

¹⁰² GILDER, *supra* note 100.

¹⁰³ KRUGMAN, *supra* note 94.

¹⁰⁴ J. ERICKSON & WILHELM ED., *HOUSING THE HOMELESS* (1986); HOCH & SLAYTON, *supra* note 88.

while the American middle class has declined precipitously.¹⁰⁵ To help seek ways to reverse such conditions, universities must become policy development and "solutions laboratories" in their teaching, research and service activities. This task is incredibly difficult, not only because of the complexity of the social problems, but because universities are organized into academic departments, many of which are accustomed to looking only at tiny slices of highly specialized knowledge rather than total systems.¹⁰⁶

The invention of a new kind of university is against the basic nature of the academic world, particularly when the required changes must occur within existing universities. For most academics, the relevant peer group from whom approval is most eagerly sought is not even located on their own campuses, but is composed of the other members of the scholar's specialized field. This peer group is nearly always national or international. While it is, of course, mildly pleasant to be well-thought of in your own university, and of some (very slight) use when salary levels are set, a scholar's reputation within his or her own university is generally irrelevant. It often does not even matter whether an excellent scholar is a good teacher. The primary rewards in universities are for scholarly productivity and for attracting large amounts of external grant funds.¹⁰⁷ Lip service is often paid to teaching and community service, but these considerations are entirely secondary.

This characteristic of the academic world means that university leaders who are seeking to create a new model within their institutions have very limited ability to require academics to redefine their areas of study, or even to reconsider their obligation

¹⁰⁵ HOCH & SLAYTON, *supra* note 88; KRUGMAN, *supra* note 94; Bartlett & Steele, *supra* note 79; Donald L. Bartlett and James B. Steele, *Middle Class: Things aren't getting better*, THE PLAIN DEALER (Cleveland), April 12, 1992, at 1-D.

¹⁰⁶ Arthur Brown has suggested that our institutional systems often make us "stupid," while Donna Kerr concludes they lead us to deceive ourselves. Brown stated:

Institutions are social systems that shape not only our actions but our values and dispositions [T]o the extent that institutions shape our values and dispositions they can make us stupid . . . and stupidity deprives us of our humanity.

Arthur Brown, *Foreword* to D. KERR, BARRIERS TO INTEGRITY: MODERN MODES OF KNOWLEDGE UTILIZATION IX (1984). Kerr describes the effects of such systems as leading to lies and self-deception. *Id.* at 29.

¹⁰⁷ See Derek Bok, *What's Wrong with Our Universities?*, 14 HARV. J. OF L. & PUB. POL'Y 305, 316 (1991).

and willingness to help solve real problems.¹⁰⁸ Nor will many academics respond to pleas about how greatly their aid is needed. University faculty and administrators fail too often to understand that universities have always been mechanisms for responding to changing social needs. They think the university exists for them rather than they for the university, with faculty and universities under an obligation to seek ways to improve society and the human condition.¹⁰⁹ This pre-Copernican type of academic fallacy, in which scholars see themselves as the center of the universe, represents the most significant obstacle to the development of an enhanced problem-solving function for American universities or even to the necessary reorganization of knowledge and the scope and content of disciplines.

IV. THE EMERGING ROLES OF UNIVERSITIES IN THE FIRST QUARTER OF THE TWENTY-FIRST CENTURY

The Missions of the Modern University

Even though the search for truth remains the critical principle that bonds the university world through time and space and across centuries and continents, new applications and manifestations of the university ideal have evolved. These new applications have clarified, expanded and altered some of the university's functions, particularly the degree to which universities interact with their societies.¹¹⁰

¹⁰⁸ Thomas Green describes how humans often organize their core-belief systems in ways that protect them from evidence that would otherwise require change in those beliefs, stating:

[W]e tend to order our [core] beliefs in little clusters encrusted about, as it were, with a protective shield that prevents any cross-fertilization among them or any confrontation between them.

THOMAS GREEN, *THE ACTIVITIES OF TEACHING* 47 (1971).

¹⁰⁹ In support, see the discussion of the university "power elite" in J. BALDRIDGE, *POWER AND CONFLICT IN THE UNIVERSITY* 175-77 (1971). A report of the American Council of Learned Societies was commented upon by Fred Hechinger of the *New York Times*. According to Hechinger the majority of scholars the Council surveyed in the area of humanities and social sciences remarked,

that the process (refereed journals) often overlooked pioneering voices in favor of conservative opinions sanctioned by the academic establishment or trendy views already approved by powerful intellectual in-groups.

Fred Hechinger, *Scholarly journals called prey of old boy networks*, *THE PLAIN DEALER* (Cleveland), Oct. 12, 1986, at 2-G.

¹¹⁰ Rothblatt states:

As long as universal knowledge was the goal of many prominent and serious members of the academic community, it was still possible to have learned amateurs in the university world, but by the end of the

The Carnegie Commission on Higher Education has defined five missions for the modern university. These are: 1) educating individual students and providing a constructive environment for growth, 2) advancing human capability in society at large, 3) educational justice, 4) pure learning, and 5) evaluation of society for self-renewal through individual thought and persuasion.¹¹¹

Each of these missions, perhaps with the exception of "pure learning," contains an implicit social agenda involving evaluation and critique of society and social regeneration through education and research.¹¹² Basic questions that those in the university world must ask include: How should universities serve these missions? How and where are priorities set? How should academic and administrative bureaucracies handle needs for change and restructuring of universities' vision and programs as our society's needs shift in importance and intensity?¹¹³

The modern university has an extremely difficult task as it attempts to redefine its working priorities in ways that allow universities to be capable of simultaneously linking a part of their activities to the communities they serve while remaining apart from those communities in a way that all universities must do in order to retain critical objectivity.¹¹⁴ The tension generated by this task creates a schizophrenic dilemma. In theory at least, universities have claimed to stand apart from their societies, protected by the almost impenetrable walls of their "ivory towers."¹¹⁵ To the extent there was direct interaction between the university and the outside world, it followed the carefully controlled methods of the academics and was conducted according to their rules. This "one-way relationship in a two-way society" has always produced tension and resentment between

nineteenth century, as the great comprehensive *summas* and positivist theories of social development became less interesting and valuable to scholars, as the newer universities registered real advances in the solution of scientific and technological problems, the model of the man of general education was being superseded. While a grand philosophical overview was still important in the minds of some scholar and likely to appear as the stated objective of specialties still in the process of definition, most academics associated intellectual achievement with narrower areas of concentration.

ROTHBLATT, *supra* note 8, at 183.

¹¹¹ THE CARNEGIE COMMISSION REPORT, *supra* note 8, at 1.

¹¹² *Id.*

¹¹³ MILLARD, *supra* note 44.

¹¹⁴ See BOK, BEYOND THE IVORY TOWER, *supra* note 44.

¹¹⁵ *Id.*

universities and the societies in which they exist.¹¹⁶ This perpetrates a lie in many parts of the university because they have already been captured by special interests.

The most relevant message to modern universities is that fundamental change in how universities organize knowledge, perceive their functions and administer services must happen in spite of most university academics and administrators.¹¹⁷ It will not occur if left only to people within the universities. We who work within universities are far too comfortable with the university institution as it is presently constituted. University academics will continue to ignore strong signals that would lead otherwise objective people to conclude there is a significant need for rapid and sweeping change within the university world.¹¹⁸

Most academics are not at all objective when asked to evaluate their intellectual disciplines and institutions. Subjectivity, tradition and vested interests abound. This makes it virtually impossible for university academics to alter their own institutions and disciplines.¹¹⁹ As pressures and crises mount, American society will become increasingly insistent that economic, political and social needs be better addressed by universities.¹²⁰ The external political forces are so chaotic, superficial, self-interested and fragmented, however, that their "solutions" will often make no sense in terms of the true functions and capabilities of universities.¹²¹ Many people within universities, on the other hand, are likely to resist change for so long that their comfortable system will simply begin crumbling about them. Given the compelling needs we now face, either alternative would be tragic.

The self-interest and institutional blindness of academics and university administrators does not mean the academic community should be ignored as new agendas are set. That would be

¹¹⁶ *Id.*

¹¹⁷ See generally L. KOEPLIN & D. WILSON, *THE FUTURE OF STATE UNIVERSITIES: ISSUES IN TEACHING, RESEARCH, AND PUBLIC SERVICE* (1985). The academics represent more of an obstacle than do enlightened university administrators, many of whom are trying to design pathways to change.

¹¹⁸ L. JONES & F. NOWOTNY, *AN AGENDA FOR THE NEW DECADE* (1990).

¹¹⁹ See *UNIVERSITIES UNDER SCRUTINY*, OECD (1987).

¹²⁰ *SCHOOL-UNIVERSITY PARTNERSHIPS IN ACTION: CONCEPTS, CASES, AND CONCERNS* (Kenneth Sirotnik & John Goodlad eds., 1988).

¹²¹ The diversity of interests and agendas ensures this. The complexity of knowledge reinforces the point. Academics are too close to the university to understand the legitimate needs of change. Those outside are too far away and too closed in their own specific contexts to provide useful leadership. Processes must be created to overcome the blindness of the different contexts. Because this requires cooperation and compromise we remain mired in rhetoric.

unfair as well as fatal to the university's overall mission.¹²² Most academics in already existing disciplines cannot and will not change, however, without significant incentives or pressure. They are intellectually, emotionally and bureaucratically trapped in rigid systems that do not allow them to see the future or act on it even when they do. Academics will eloquently proclaim countless reasons why it would be imprudent to make basic changes in how they operate. They will engage in bureaucratic guerrilla warfare to undermine others' efforts at reform. This is something in which academics excel, as anyone who has ever attended one of their gatherings knows all too well.

The University as a Solutions Mechanism

The modern university's major roles during the first quarter of the Twenty-first Century must include developing, demonstrating and facilitating the implementation of social, political and economic solutions for cities, states, regions and nations. The particular focus of a specific university will depend on a wide variety of factors, including the institution's influence and power base.¹²³

Different universities can be expected to carve out distinct approaches that define their reference communities more or less expansively depending on such factors as location, the nature of their students, availability and flexibility of resources and faculty and administrative preferences and skills. Within specific universities there will be multiple agendas. One department, program or disciplinary experiment may focus on local or state issues while others concentrate on international or global issues. Building the problem-solving agendas and capabilities of universities requires the development of interacting networks of universities

¹²² See, e.g., CRISIS MANAGEMENT IN HIGHER EDUCATION (H. Hoverland, et al., eds., 1986); RICHARD J. STORR, THE BEGINNING OF THE FUTURE: A HISTORICAL APPROACH TO GRADUATE EDUCATION IN THE ARTS AND SCIENCES (1973); SUCCESSFUL STRATEGIC PLANNING: CASE STUDIES (Douglass W. Steeples ed., 1988).

¹²³ Cleveland State University is, for example, currently engaged in an extensive strategic process that is attempting to define the unique missions of a modern "urban-state" university. What this means is elusive and may be beyond the capabilities of existing institutions to define practically and usefully. People within universities are unwilling and perhaps unable to understand and address issues of change and differing roles. What will therefore happen is that the definitions will be created and imposed by administrators, as consequences of beleaguered budgets, and pressures from politicians and events. See David Barnhizer, *A Strategic Report on The Future of the Cleveland State University: Its Mission, Strengths, Weaknesses and the Opportunities for Using CSU's Intellectual Resources to Serve the Greater Cleveland Region*, March 27, 1992 (unpublished).

and interdisciplinary compartments within universities. These networks must be capable of mutually reinforcing each other's capabilities and efficiently allocating resources and functions to avoid unneeded duplication.¹²⁴

Whatever the institution's specific focus, a part of a university's research, teaching and service activity should be directed toward helping to understand methods of remedying problems, altering unwise policies, overcoming obstacles and seizing opportunities.¹²⁵ This mission requires the development and testing of solutions that actually work, not just elegant academic schemata that disintegrate in the crucible of reality.

Economic Development and True Wealth Creation

Many of the solutions that universities must help develop rest ultimately on the foundation of economic development and wealth creation.¹²⁶ Without an improved and sustainable economy producing resources sufficient to allow us to satisfy the incredibly complex panoply of social needs, the first quarter of the Twenty-first Century will be challenging at best. A far more likely scenario is one filled with increasing conflict, class hostility and warfare, social disintegration and racial strife.¹²⁷ Naive optimism and banal platitudes about the future will not avoid the relentless and accelerating plummet toward severe social decline our society is now experiencing.

Without the sustainable creation of wealth and opportunity, cities, states and nations will not be able to solve their most fundamental problems because essential resources, services, investment capital, consumer confidence, ability to participate in the economy, and access to jobs and opportunities will not exist on a scale sufficient to generate a healthy economy and, consequently, a society with the ability and resources needed to be just and fair.¹²⁸ It is no longer a matter of rhetoric or the often empty language of law. We must accept the task, not simply talk about it. Words about freedom and justice, civil rights, equal opportunity and so forth will become increasingly hollow unless we re-

¹²⁴ BOK, *BEYOND THE IVORY TOWER*, *supra* note 44.

¹²⁵ Methods for adapting can be seen in *LEADERSHIP AND INSTITUTIONAL RENEWAL* (R. Davis ed., 1985).

¹²⁶ HOWARD R. BOWEN, *THE STATE OF THE NATION AND THE AGENDA FOR HIGHER EDUCATION* (1983).

¹²⁷ BENNETT, *supra* note 45; HACKER, *supra* note 72; JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991).

¹²⁸ KRUGMAN, *supra* note 94.

create a system within which their realization is both politically and economically possible.

The goal of helping to achieve productive solutions must therefore become a central element of modern universities, not only in their research agendas, but through the administrative, educational and interactive processes by which universities facilitate the implementation of solutions.¹²⁹ The new breed of problem-solving universities need to recreate themselves as forces within their society. This does not mean that universities must become direct-care providers of social services. That is beyond their capabilities and would destroy the essence of the institutional university. But universities can create demonstration programs that examine critical conditions and test workable solutions. Universities can examine policy choices, evaluate needs and build working networks that cut across boundaries both within and beyond the university. Universities can focus the intellectual intensity of both faculty and students on issues of significant consequence to this society. This does not mean that classical studies and philosophy should not be taught. Indeed, the ideas and methods they represent are essential elements of the quality of our minds. Universities need not become creatures of absolute immediacy, but must concentrate on developing in their students the critical skills of thought and action essential to dealing with an increasingly complex and accelerated environment. The knowledge and methods of past, present and future are part of the total learning required.

Even talking about such a reformulated mission in American universities creates problems and hostility. Faculty and administrators of present-day universities have all been trained in the traditional model. While they may be able to articulate appropriate rhetoric about problem solving and the pursuit of a new mission for universities, people who are now working within universities do not understand clearly what that new mission is, nor do they accept it as worthy.¹³⁰ Even if it is understood theoretically, once a university begins to take the steps required to move from theory to concrete action and reorganization, savage opposition will emerge as interest groups begin to realize that

¹²⁹ BOK, *supra* note 44.

¹³⁰ See, e.g., RICHARD HOFSTADTER, *ANTI-INTELLECTUALISM IN AMERICAN LIFE* 26 (1966). "[F]ew of us believe that a member of the profession, even a learned profession, is necessarily an intellectual [I]ntellect may help but intelligence will serve well enough. We know . . . that all academic men are not intellectuals" *Id.*

their own interests are being affected.¹³¹

The barriers are not only within the existing universities. While universities must move closer to understanding and responding to society's needs and difficulties, and try to learn how to help create opportunity, such proximity and interaction will cause universities to increasingly fall prey to the influence of external forces. Many special interests are seeking to use universities to advance their own agendas. They care nothing about university ideals or the intellectual mission, nor about objectivity and truth.¹³² American society is swollen with people and interest groups pursuing power, prestige and ideological agendas. Universities offer the opportunity to achieve these goals. Universities, therefore, assume great risk when they seek to define their mission in ways that bring the institution closer to the needs and problems of society.

Universities must, however, become "players." If universities are to play significant roles in shaping this nation's future, it will not be enough to simply issue unrealistic or theoretical academic reports about proposed solutions. Without some degree of proximity to the situations being studied, particularly in areas where social change requires collective action and cooperation, the problems will neither be understood adequately nor will the solutions be realistic. But such closeness to the action creates the constant risk of a dangerous subjectivity that both subverts the intellectual clarity of the university and entangles the university in a web of special interests and hidden, external agendas.¹³³

These fears are not hypothetical. External influences and funding of universities' technological and scientific research have already produced a tragic situation of dependency, fraud and intellectual distortion in many American universities.¹³⁴ Much of the ability of universities to define their research agendas has

¹³¹ General propositions are always easy to accept. Change that affects "me" is almost by definition something bad.

¹³² As much as I and others criticize the university and its frequent hypocrisies in terms of seeking to advance the search for truth, it is clear to me that no other institution is legitimately trying hard. Universities are one of the only, albeit imperfect, mechanisms we have to fight against the greed, self-interest and moral and intellectual darknesses that have beset our world.

¹³³ I do not pretend to know the answer about how to prevent the negative consequences. But we must learn and part of this learning involves explicit confrontation of the problems such relationships create.

¹³⁴ *Science fraud cited by 1 in 4 in survey*, THE PLAIN DEALER (Cleveland), April 12, 1992, at 6-G (citing recent *Science* magazine report); see also Carolyn J. Mooney, *Critics Question Higher Education's Commitment and Effectiveness in Dealing With Plagiarism*, THE CHRONICLE OF HIGHER EDUCATION, February 12, 1992, at A13.

been captured by external funders. In most universities today, whether Harvard, Stanford, Texas, Case Western Reserve or Cleveland State, research agendas in science and social science are no longer being driven primarily by intellectual curiosity and the pure desire to know. Those agendas instead follow the siren call of billions of dollars allocated by external funding sources, all of which have their own agendas.¹³⁵ Such mega-institutions as the Department of Defense, Department of Energy, the National Science Foundation, the National Academy of Sciences, the National Endowment for the Humanities and the National Institute of Health all have far more to do with the design of academic research projects than do pure intellectual quality and interest.¹³⁶ Large private corporations in the United States, Japan and Europe are increasingly seeking to subsidize university scientists, essentially paying universities to conduct research and development that should be done by private sector institutions.¹³⁷ Private grant-making foundations provide substantial grants to many universities. These foundations, however, tend to have "will-o-the-wisp" funding agendas that shift whimsically every two or three years depending on current fads and foundation preferences. Academic researchers and teachers who write grants spend a great deal of time discovering what a particular foundation is interested in funding and then attempt to put a "spin" on research proposals that they hope will make it more likely they will attract the grantmaker's attention. The inevitable end result is distortion.

The irony is obvious. Universities, when faced with demands for their time and resources, frequently proclaim the fear that the purity of the academic "ivory tower" will be tainted by contact with others' interests and agendas. But many universities and university scholars have already been captured by the agendas of external funders. A national research bureaucracy has emerged in the United States that is antithetical to an independent, unfettered search for truth of the kind suggested by the university ideal.¹³⁸ The grant approval process is generally one in which

¹³⁵ See, e.g., Colleen Cordes, *Dominance of Science Policy by Physicists Seen Waning with End of Cold War and Rise of Biological Research*, THE CHRONICLE OF HIGHER EDUCATION, March 4, 1992, at 1 ("It's probably fair to say that nuclear weapons provided the early entree for some physicists to learn how to function in Washington. . . .").

¹³⁶ See BOK, *BEYOND THE IVORY TOWER*, *supra* note 44.

¹³⁷ See BOK, *UNIVERSITIES*, *supra* note 44, at 13-22; DRUCKER, *supra* note 89, at 269.

¹³⁸ See Hechinger, *supra* note 109.

peer review committees of scientists and social scientists make recommendations for the award of governmental grants to university researchers. These reviewers are already well established in their fields and are almost inevitably committed to a particular approach or orthodoxy. The reviewers within a specific discipline are part of a more or less invisible old-boy network that allocates grants to the people and institutions of which they most approve and which, not surprisingly, tend to mirror their own interests.¹³⁹

This process has created a distorted and wasteful "welfare" system of sponsored research upon which many universities have become dependent. It tends to inhibit innovative research rather than generate and nurture it. There is obviously substantial danger involved in bringing universities into partnerships with external forces, particularly when those external interests are providing large sums of money and operating according to their own agendas. This problem may be exacerbated as universities become even more involved in political, economic and social processes that they are attempting to understand and assist because such operating systems in the real world function according to their own rules, values and agendas.

Universities must build more effective pathways of interaction between themselves and the communities they serve. Universities, however, have never dealt well with the dilemma this task poses. Universities have sought to restrict their interactions with the real world because the conditions of that world are messy, uncontrolled, manipulative, demanding, intolerant and unpleasant.¹⁴⁰ The world outside the university moves to differ-

¹³⁹ *Id.*

¹⁴⁰ BRINTON, *supra* note 22. Brinton asserts: "*Cumulative* knowledge is best exemplified by the knowledge we call commonly natural science, or just science." *Id.* at 12. "*Noncumulative* knowledge can here be illustrated best from the field of literature." *Id.* at 13. He concludes:

[O]ur contemporary men of letters are today writing about the very same things the Greek men of letters wrote about, in much the same way and with no clear and certain increase in knowledge. Our men of science, on the other hand, have about astronomy and physics far more knowledge, far more ideas and propositions, than the Greeks had.

Id. at 13. Brinton takes pains to stress, however, that this distinction:

[D]oes not mean that science is good and useful, and that art, literature, and philosophy are bad and useless, but merely that in respect to the attribute of cumulativeness they are different.

Id. at 14.

Overton Taylor captured the essence of the quest in this statement: The seeker of reasoned, moral wisdom, or knowledge of the princi-

ent rhythms than do academic institutions. The real world insists on changing unpredictably—therefore, universities and the real world have rarely fit together well. Yet this is precisely what the Twenty-first Century university must seek to do.

V. WHAT ARE THE EMERGING ROLES OF UNIVERSITY LAW SCHOOLS?

If universities must change in order to better serve society, how must university law schools in America respond in order to be responsible members of the university community? Law surrounds us, constrains us, facilitates and confuses us, blocks change and compels adaptation, seizes and distributes economic resources and social goods. Law in America is meta-instrument as well as reflector and formulator of basic values. Law has become a critical and fundamental tool of power, the dispensation of justice and injustice, and the ability to take or block a significant proportion of effective action in the United States. Law and its processes infiltrate nearly everything we do, and our awareness of this is increasing.¹⁴¹ If our society needs help in the ways described earlier in this article, it is impossible to leave law and legal institutions out of the equation because law creates, facilitates and obstructs in ways we do not yet fully understand, in large part because we long-ignored asking questions and formulating the research hypotheses that might have led to understanding. This means that if university law schools are to be honorable and productive participants in American society during the first part of the Twenty-first Century, they must examine

ples which ought to guide us in the conduct of all public affairs, needs the fullest, universal width or breadth of outlook on the basis, affairs, and interests not of some but of all human beings and on all departments of their lives.

OVERTON H. TAYLOR, *THE CLASSICAL LIBERALISM, MARXISM, AND THE TWENTIETH CENTURY* 94 (1960).

¹⁴¹ "After all, it is through law, legal institutions, and legal processes that customs and ideas take on a more permanent, rigid form. The legal system is a structure. It has shape and form. It lasts. It is visible. It sets up fields of force. It affects ways of thinking." LAWRENCE FRIEDMAN, *AMERICAN LAW* 257 (1984). Frederick Rodell threw down the gauntlet over fifty years ago:

With law as the only alternative to force as a means of solving the myriad problems of the world . . . The articulate among the clan of lawyers might in their writings, be more pointedly aware of those problems, might recognize that the use of law to help toward their solution is the only excuse for the law's existence, instead of blithely continuing to make mountain after mountain out of tiresome mole hills.

Frederick Rodell, Comment, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 43 (1936).

what they do far more fully than ever before, develop new tools and intellectual content in teaching and research, and redefine important elements of their visions and goals. This is something they are unlikely to do, or to do willingly.

For the past century, American law schools have been designed primarily to serve the needs of private law practice.¹⁴² Even that has not often been done particularly well. American law schools are an implicit combination of method, process and language far more than they are centers of learning that possess coherent, concrete goals and agendas. This is not, by itself, automatically bad because excessive concreteness of goals and agendas often leads to rigidity and the kind of orthodoxy criticized in the beginning of this article. Open-textured methodology and subject matter such as are now found in law schools conversely will tend to allow more flexible and adaptive individual and institutional mindsets. It is easy to critique the methodologies of legal thought as being inadequate in a scientific sense. In the political, social, legal and judicially oriented worlds of thought and action, however, the "impure" methodologies of law offer special strengths and insights that "purer" (and in many ways more sterile) methods lack or reject as invalid.¹⁴³ It also means

¹⁴² See generally JERROLD AUERBACH, *UNEQUAL JUSTICE* (1976); STEVENS, *supra* note 6. Zemans and Rosenblum remark:

With formal legal education maintaining a virtual monopoly over preparation for entry into the legal profession, it is assumed that law schools are or ought to be the primary source of the skills and knowledge requisite to the practice of law.

FREDERICK ZEMANS & VICTOR ROSENBLUM, *THE MAKING OF A LEGAL PROFESSION* 123 (1981). Nor was it even all of law practice. A stratified hierarchy of law schools and law firms emerged early in this century that has disserved the intellectual and moral development of law, law schools, lawyers and faculty. See AUERBACH, *supra* note 142 (particularly the chapters concerning "Cleansing the Bar," and "A Stratified Profession").

¹⁴³ Much of legal knowledge is "soft." In our implicit recognition of this fact in a scientific world, we have been afraid to make fools of ourselves because we doubt the relevance, truth or validity of what we have to say. Perhaps the most poignant statement has been made by Felix Cohen who describes the European jurist Von Jhering as once dreaming he had died, finding himself in a "special heaven reserved for the theoreticians of the law" with all legal concepts in their purest or most true form. So that his mind would no longer be cluttered and encumbered with earthly knowledge, Von Jhering, as all new entrants, drank the "draught of forgetfulness." Embarrassingly, the draught proved superfluous for jurists because it turned out "[t]hey had nothing to forget." Felix Cohen, *Transcendental Nonsense and the Functional Approach*, 25 *COLUM. L. REV.* 809 (1935). I developed these themes in David Barnhizer, *Prophets, Priests and Power-Blockers: Three Fundamental Roles of Judges and Legal Scholars in America*, 50 *U. PITT. L. REV.* 127 (1988); DAVID BARNHIZER, *The University Ideal and the American Law School*, 42 *RUTGERS L. REV.* 109 (1989); David

that law schools may be better able to experiment and adapt their methods, goals, content and focus than is so in other academic disciplines. In a period of rapid change in which intellectual flexibility is a dominant factor, what has been argued to be a weakness in the law schools may now become a strength.¹⁴⁴

Such a wide array of academic and professional criticism of American law schools exists that there is no need to traverse heavily trodden ground beyond several initial observations.¹⁴⁵ We know, for example, that Langdell's legacy can fairly be argued to have distorted the legal curriculum and the direction of much of legal scholarship in the quest to develop a legitimate legal science.¹⁴⁶ Some would even conclude that there was no real intellectual quest being engaged in by many faculty in the past century and that the rhetoric of "legal science" was nothing more than an illusion with either the purpose or the predictable

Barnhizer, *The Revolution in American Law Schools*, 37 CLEV. ST. L. REV. 227 (1989) [hereinafter Barnhizer, *Revolution*].

Edward Levi describes the "soft" nature and dynamics of legal thought as follows:

[T]he kind of reasoning involved in the legal process is one in which the classification changes as the classification is made. The rules change as the rules are applied. More important the rules arise out of a process which, while comparing fact situations creates the rules and then applies them. . . . Not only do new situations arise, but in addition peoples' wants change. The categories used in the legal process must be left ambiguous in order to permit the infusion of new ideas.

EDWARD LEVI, AN INTRODUCTION TO LEGAL REASONING 3, 4 (1949).

¹⁴⁴ Francis Allen, *Legal Scholarship: Present Status and Future Prospects*, 33 J. LEGAL EDUC. 403, 404 (1983). "In part, the problem is one of communication. Many in the law schools are speaking a language incomprehensible to lawyers and judges." *Id.* at 404. Allen also suggests: "We feel less confident than we did formerly that we understand our colleagues' judgments on questions of intellectual style, purpose or technique. We sense a dissolving accord on what is good scholarly work." *Id.* This "dissolving accord" is both inevitable and in many ways positive. See Barnhizer, *Revolution*, *supra* note 143.

¹⁴⁵ STEVENS, *supra* note 6, at 76. See also Barnhizer, *Revolution*, *supra* note 143; Freeman, *Truth and Mystification in Legal Scholarship*, 90 YALE L.J. 1229 (1981); Duncan Kennedy, *Cost-Reduction Theory as Legitimation*, 90 YALE L.J. 1275 (1981); Frank Michelman, *Politics as Medicine: On Misdiagnosing Legal Scholarship*, 90 YALE L.J. 1224 (1981); Mark Tushnet, *Legal Scholarship: Its Causes and cure*, 90 YALE L.J. 1205 (1982).

¹⁴⁶ J.B. Conant comments on Langdell as follows:

Law, considered as a science, wrote Langdell. What did he have in mind when he wrote that word "science"? Not the kind of activity in which at that time Clark Maxwell was engaged; not the development of the atomic-molecular theory Langdell was thinking of science much as was Bell or Edison To me, therefore, Langdell is to be placed among the great American inventors of the nineteenth century.

JAMES BRYANT CONANT, TWO MODES OF THOUGHT 45 (1964).

effect of shielding intellectually incompetent and unproductive legal academics from external criticism.¹⁴⁷ In any event, this is no longer a valid criticism.¹⁴⁸ We know also that important questions of justice, fairness, social and professional responsibility and morality were almost entirely absent from law schools until roughly the past twenty years.¹⁴⁹ These questions are now flooding into the curriculum and legal scholarship as we seek to understand their impact both within the purely intellectual sphere and the worlds of political policy and law practice.¹⁵⁰ We know that fundamental questions of power and its abuse as manifested in sexism, racism, and economic discrimination were ignored by law schools until quite recently, while the status quo was uncritically accepted.¹⁵¹

We are now in the midst of a period of rapid change in

¹⁴⁷ See, e.g., *supra* note 145 (sources therein); Christopher Stone, *From a Language Perspective*, 90 YALE L.J. 1149 (1981). I. Bernard Cohen observes:

Max Planck . . . is often quoted to the effect that "new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it.

I. BERNARD COHEN, *REVOLUTION IN SCIENCE* 467-68 (1985). Cohen describes "the shift of allegiance from one paradigm to another as an act similar to religious conversion." *Id.* at 468.

¹⁴⁸ The criticism is invalid in 1992 because law schools have embarked on an exciting journey that, while politicized and defective, has extended greatly the methods and substantive concepts of the intellectual dimensions examined by legal scholars. Invisible and incremental change has occurred. As Ellul describes, "This is the way progress takes place in the field of education, too. After the general direction given its initiators . . . it is the findings of thousands of educators which ceaselessly nourish the improvement of technique. *In fact, educational systems are completely transformed as a result of practice—without anyone's being quite aware of it.*" ELLUL, *supra* note 29, at 86 (emphasis added).

¹⁴⁹ See, e.g., the critique of this attitude in Jerrold Auerbach, *What Has the Teaching of Law to do with Justice?*, 53 N.Y.U. L. REV. 57 (1978); Anthony D'Amato, *Rethinking Legal Education*, 74 MARQUETTE L. REV. 1 (1990); James Taylor, *Law School Stress and the "Deformation Professionelle"*, 27 J. LEGAL EDUC. 251, 265 (1975). Taylor reports on an interview with law students:

As for questions of morality, justice and human feelings, we were told that a stock answer was provided by some faculty members: "If you want to talk about that, the school of religion is just down the street."

Id.

¹⁵⁰ See, e.g., ANTHONY D'AMATO AND ARTHUR JACOBSON, *JUSTICE AND THE LEGAL SYSTEM* (1991). Kamenka and Tay, writing in *Law and Social Control*, conclude that "[t]he law . . . is made to make man, to change him, to strengthen one side of his constitution, behaviour and activities against others." *LAW AND SOCIAL CONTROL* viii (E. Kamenka & A.E.S. Tay eds., 1980). Compare this with the observations by ANSHEN, *supra* note 23 (concerning the function of language), BRONOWSKI, *supra* note 23 (same), and Arendt, *supra* note 25.

¹⁵¹ The most valid explanation is that law faculty have accepted the confines of an orthodox perspective that did not include these concerns within its intellectual uni-

American law schools.¹⁵² This eventually happens in any institutional system. Emerging hypotheses continually replace or modify earlier hypotheses.¹⁵³ Unless a system or set of institutions have been prepared for change or are overwhelmed by powerful and intense external forces that create irresistible pressures, reform proposals tend to fall on deaf ears.¹⁵⁴ Change occurs because pressure eventually builds up within existing systems due to new discoveries, obligations or opportunities that overwhelm the dominant paradigms, or by the dictates and needs of the external systems that the academic system takes as its main points of reference and legitimacy.¹⁵⁵ This is happening within Ameri-

verse and that we have been people who live *off* ideas, not *for* them, not true intellectuals. One commentator states:

[T]he work of lawyers, editors, engineers, doctors, indeed of some writers and of most professors—though vitally dependent upon ideas, is not distinctively intellectual. A man in any of the learned . . . professions must have command of a substantial store of frozen ideas to do his work; he must, if he does it well, use them intelligently; but in his professional capacity he uses them mainly as instruments. The heart of the matter . . . is that the professional man lives *off* ideas, not *for* them. His professional role, his professional skills, do not make him an intellectual. He is a mental worker, a technician.

HOFSTADTER, *supra* note 130, at 26.

¹⁵² See Barnhizer, *Revolution*, *supra* note 143. "The synthesis of Langdell's method with legal realism that produced the dominant orthodoxy of legal thought and legal education for the post-World War II generation has finally broken down. Our world is more confused and unstable, but new patterns of thought and action are emerging." Cramton, *supra* note 6, at 1.

¹⁵³ It was certainly past the time when new hypotheses were needed in American law schools. Legal historian Robert Stevens has observed about American legal scholarship:

Legal scholarship was yet another area whose purpose had been confused by the demands placed on the law schools as they both assumed their role as the sole point of entry for practice in the profession and also claimed legitimacy in the scholarly confines of the university. For a hundred years, commentators had been expressing surprise that despite the number of distinguished lawyers teaching in law schools, the output of scholarly literature was small. The collection and regurgitation of doctrine might have seemed scholarly to Langdell; it did not impress those in other disciplines in the twentieth century.

STEVENS, *supra* note 6, at 16.

¹⁵⁴ The idea of the competing ebb and flow of languages of discourse is described by Charles Axelrod in *Studies in Intellectual Breakthrough*:

Ideas do not float freely among people; they become rooted in commitments, ossified and sustained within intellectual communities; they are cradled among avid sponsors and defenders whose work relies on their stability. Thus the tension of discourse refers not only to the presence of one language addressing (and straining) another, but to the presence of one language addressing the inertia of another.

CHARLES AXELROD, *STUDIES IN INTELLECTUAL BREAKTHROUGH* 2-3 (1979).

¹⁵⁵ See Barnhizer, *Revolution*, *supra* note 143. When I entered law school as a stu-

can law schools.

The law school world in the United States has until recently been like the common law, changing changelessly, altering even basic tenets without admitting what is occurring.¹⁵⁶ The past twenty years have been ones of radical change within law schools and legal scholarship—yet, on the surface, the schools do not look extraordinarily different.¹⁵⁷ If an observer possesses a sense of history, however, the changes are obvious and substantial, although still not enough. Far-richer courses and curricular modifications can be found even in the first year. Columbia has instituted a first-year course on law and the regulatory state; Chicago-Kent has developed a first-year program on ethics and morality; Maryland and Tulane have created innovative public interest courses or imposed public service obligations on their law students; Cleveland State has for several years required a “perspectives” course during the first-year, selected from a menu that includes jurisprudence, legal history and comparative law. An array of innovative electives exists at many schools, attesting to the expanding breadth of interest and the greater diversity of experience of many law faculty. Skills, morality, ethics and professional responsibility, economics, philosophy and justice, critical methodology and feminism, civil rights and literature all combine to make the new intellectual vitality of law schools

dent a little more than twenty years ago, of roughly 180 students in my first year class, four were women and one was black. Such figures were representative of American law schools. They not only reflected the makeup of student bodies, but of law faculties, the legal profession itself, and the judiciary. The transformation has been rapid and profound. By 1984, women made up 15 percent of the U.S. judiciary, 38 percent of law students, and 16 percent of law professors. Press, *With Justice for Some*, NEWSWEEK, June 4, 1984, at 85. Press offers statistics and commentary reflecting that women lawyers are still denied equal access to partnership positions in the more prestigious law firms. The effects of long term dominance by white males is still reflected in who occupies the senior tier of American law faculty. In a study of 1,950 full-time senior law faculty, Swygert and Gozansky found 1,872 to be men (96%) and 78 women (4%). Swygert & Gozansky, *Senior Law Faculty Publication Study: Comparisons of Law School Productivity*, 35 J. LEGAL EDUC. 373, 380-81 (1985).

¹⁵⁶ Pound suggests the subtle dynamism of the process: “Conflict and competition and overlapping of men’s desires and demands and claims, in the formulation and assertion of what they take to be their reasonable expectations, require a systematic adjustment of relations, a reasoned ordering of conduct, if a politically organized society is to endure.” ROSCOE POUND, *NEW PATHS OF THE LAW* 2-3 (1950).

¹⁵⁷ Marc Galanter suggests that the recent “knowledge explosion” in law is making the law more accessible to many people and causing the law and its institutions to lose their “remote and transcendent character. Its contingency, discretion, and malleability are visible to a wider audience.” Marc Galanter, *The Legal Malaise; or, Justice Observed*, 19 L. & Soc. Rev. 537, 549 (1985).

something to admire. Legal scholarship has become diverse and wide-ranging. The public service activities of many law faculty are widespread and the legal curriculum more interesting and balanced. Even with the changes that have occurred in the past twenty years, we still do not know how to shape American law schools for the demands, needs and opportunities of the Twenty-first Century.¹⁵⁸

One difficulty is that law schools are continually besieged with demands for change from faculty, the judiciary, lawyers, students and special interests. Conditions are emerging in the schools, as in the rest of the university, that are generating significant pressures to alter what they are doing.¹⁵⁹ The demands that internal and external forces are placing on the law schools are themselves often incompatible in terms of visions and agendas. Law schools cannot be everything to everyone and cannot satisfy all the demands and needs. They must therefore set priorities as to what they are best suited to accomplish. A critical factor in the strategic process that should occur must be recognition that the financial resources available to most law schools are likely to remain static or even decline in real terms as the conditions of society worsen. Under either scenario, law schools must develop strategies that identify and maximize the best effects of what they do, and respond to new directions while conserving

¹⁵⁸ The ferment in fields of knowledge has even made the *New York Times*. See Campbell, *Scholarly Disciplines: Breaking Out*, N.Y. TIMES, April 25, 1986, at A18, col. 1. John Naisbitt, author of *Megatrends*, wrote that: "There are cities, companies and institutions in this country that are like dinosaurs waiting for the weather to change. The very ground is shifting beneath us. What is called for is nothing less than all of us—including lawyers—to reconceptualize our roles in a new society." John Naisbitt, *Megatrends for Lawyers and Clients*, 70 A.B.A. J. 45 (June 1984).

¹⁵⁹ Richard Nahstoll, *Current Dilemmas in Law-School Accreditation*, 32 J. LEGAL EDUC. 236 (1982). Nahstoll observed: "Several groups share in common an interest in quality legal education. A climate of suspicion and antagonism currently divides those groups. The division disserves their common goal." *Id.* at 236. He continues:

The fact is that the bench *does* have a legitimate interest in the products of legal education. The bench must work with them, and through them, and is dependent upon their skills, their efficiency, and their professionalism to process the work of the judicial system for which the bench is ultimately responsible. Moreover, the bench has the explicit responsibility of judging the qualifications of those products for licensure and the privilege of practice The interest of bench and bar will not be dissipated by reason of being ignored, disdained, or scorned by academicians Failure, or further protracted delay, in establishment of workable relations will very likely exact of legal education very high costs indeed.

Id. at 238.

static or diminishing resources. Law schools are ill-equipped for this task both structurally and intellectually, and in terms of faculty training, interest and experience.

Downsizing, Adaptation, and Reinvention

Law faculty have aggressive and competitive verbal personalities with a tendency to attempt to dominate discourse. As in many fields, individuals not seen as part of a particular intellectual camp or movement are often viewed as enemies by its adherents.¹⁶⁰ This blocks communication and erects obstacles to change. Nonetheless, law schools have changed. Whether that change is a revolution or an evolution is a matter of perspective and semantics. What is clear is that the changes that have occurred are still not enough, nor are they always well thought out or anything more than knee-jerk responses to the stimuli contained in aggressive intellectual and ideological challenges.

The employment market for lawyers is saturated or nearly so. This will soon produce an inevitable drop in demand (i.e., applications). Unless law schools learn how to diversify their products to gain access to new service markets and employment opportunities many of the schools will be battered by a 15-20 year period of sharply falling demand for their products (i.e., graduates seeking to become practicing lawyers). Most law schools will experience increased difficulty in enticing consumers potentially interested in purchasing their services. This falling demand will be buffered for many schools by the fact that there are few better options available for students. In an odd way, law schools seem to have become the last vestige of the true generalist liberal arts college, albeit at the graduate level. A law degree allows a law graduate to embark on a wide and highly diverse set of career pathways. This can be expected to increase rather than

¹⁶⁰ Many law faculty are engaged in rhetorical and propagandistic battles to advance specific agendas. Aristotle captured the essence of rhetoric:

[Y]ou must render the audience well-disposed to yourself, and ill-disposed to your opponent; (2) you must magnify and depreciate [make whatever forms your case seem more important and whatever forms his case seem less]. Aristotle, *The Epilogue*, reprinted in *THE RHETORIC OF ARISTOTLE* 3.19 (L. Cooper ed. & trans., 1932).

In propaganda it is important to distinguish between being accurate factually and how the propagandist lies or distorts in the phase of interpretation and intention. Jacques Ellul describes the need for factual accuracy and the great difficulty involved in identifying falsified interpretations and professions of intent: "[N]o proof can be furnished where motivations or intentions are concerned or interpretation of a fact is involved." ELLUL, *supra* note 27, at 57.

diminish. If law schools pursue this aspect of their quality intelligently, it may make them more attractive and influential. Business schools are no longer automatic paths to high level management positions. Many scientists and technically trained people who would normally be employed in the United States defense industry have been laid off as that industry shrinks. For students without viable or obvious alternatives, law school offers a temporary safe harbor from the real world, one in which they can hide and hope conditions will improve. Law schools will also be insulated by their ability to reach more deeply into their applicant pools as they did during the application downturn of the early 1980's. This will have a ripple effect on all law schools as standards begin to drop unless, of course, law schools expand their curricula and mission.

By the year 2000, the conditions of change will have coalesced. Law schools that have adapted their programs, administrative structures and curricula, and streamlined their resource usage and base will remain competitive and may even gain. Other law schools will find themselves in serious economic and intellectual difficulty. There are several aspects to the process of adaptation. First, law schools need to become more efficient at what they do as the costs of their activity, both personnel and library, ratchet steadily upward. Second, schools must adapt their programs to better prepare students for law practice. A great deal of this has already been done in recent years and this is an increasing strength of many law schools. This does not, however, mean to suggest that there is a single package of skills that must be pursued in depth by all law students. The contexts of law practice vary greatly, and this must be taken into account. Third, the schools must rethink the law curriculum in terms of the special content that is essential for graduates who can be expected to play important leadership roles as judges, legislators, counsel, advisors, teachers, public interest activists, bureaucrats, regulators, policy-makers and corporate managers. This does not mean that the law curriculum suddenly becomes filled with political science and sociology, but does ask basic questions about goals that include, "if I want to communicate important knowledge, perspectives, values and skills to law students that will make them better at the increasingly widespread roles lawyers fulfill, what kinds of concepts, skills and knowledge should be included in my teaching and through what kinds of methods should they be communicated?" Fourth, as a privileged member

of the intellectual class, a member of a law faculty ought ask what kinds of responsibilities do I possess that should direct my academic and professional behavior? We ask such questions of ourselves far too infrequently, often taking the academic's freedom without accepting the academic's responsibility. Fifth, how should law schools define and serve their "justice mission?" By this, I mean their prophetic mission in which academics pursue the abusive truths of injustice and confront those responsible with their findings and their constructive mission, in which the meaning of a just system is explored, critiqued and developed.

To make the needed changes, law schools need to diversify their faculty and staff. The skills, knowledge and experiences of law faculty are more advanced and diverse than they were a generation ago but we are still too limited as a group. Because of our limits, we tend to define teaching and scholarly missions in terms of our abilities and limitations rather than what should actually exist if we were doing things "right." Meaningfully altering the diversity and expanding the abilities of faculty is difficult at this time because of the relatively low level of new hiring, the need to hire people who fill slots within the traditional curriculum, the powerful tendency to replicate ourselves in our hiring decisions, and the large numbers of middle-aged law faculty who came to the law schools during the great surge in hiring of the late 1960's and early 1970's and who are not yet near retirement age. Many of these middle-aged faculty are set in their ways. They are not interested in taking on new responsibilities or inventing a new kind of institution. The irony is that quite a few of these faculty are, by nature, highly motivated and innovative. Many came to the law schools committed to social and political change. Just at the point when they have begun moving into key administrative and senior faculty positions in the law school world and have the ability to make decisions that could lead to fundamental change, the inherent conservatism that emerges with position, vested interest, habit and age is likely to cause this group of antiquarian activists to resist change within law schools.¹⁶¹

¹⁶¹ In his "Concluding Notes" to *The General Theory*, Keynes observed: In the field of economic and political philosophy there are not many who are influenced by new theories after they are twenty-five or thirty years of age, so that the ideas which civil servants and politicians and even agitators apply to current events are not likely to be the newest. JOHN KEYNES, *THE GENERAL THEORY OF EMPLOYMENT INTEREST AND MONEY* 383-84 (1935).

Law schools, like universities generally, must reinvent themselves, or at least reinvent important parts of their mission and programs.¹⁶² Law schools and universities cannot escape legitimate pressure for change and adaptation. As the number of lawyers in the United States nears one million, many outside the law schools will increasingly ask whether American society needs or can sustain the seemingly parasitical class of lawyers.¹⁶³ If law schools are to withstand this assault, they need to develop valid additional functions and justifications for what they do, not self-serving rationalizations designed to "keep the wolf from the door," but responsible visions in service of fundamental social, political and economic needs. Part of this process requires expanding law schools' intellectual vision. Another part requires the development of new markets for the services of the schools and their graduates. The *Kondratiev* transformation we are experiencing will leave nothing unchanged or unscathed.

This reformulation of American law schools should concentrate on identifying ways in which they can become stronger, more effective, more socially responsible and productive and efficient. It should also identify ways in which law schools can contribute to society consistent with the leadership roles lawyers have assumed in politics, business and public interest activities. A third avenue of analysis should investigate issues such as how lawyers cause harm to the social fabric, how they preserve impor-

¹⁶² Edwin Garlan remarked:

Justice states the fundamental method of law—the method of purposeful activity that is, action directed toward ends. Law is teleological, and justice in its broadest terms is the statement of that fact and is in a sense the instrument which keeps law teleological in its method. Justice expresses and celebrates this purposeful orientation of law; it is formative because its use keeps men sensitive to their responsibility and willing to fight for concrete achievements. It thus is the expression for the motive power of law

EDWIN GARLAN, *LEGAL REALISM AND JUSTICE* 125 (1941).

¹⁶³ See, e.g., Derek Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570 (1983); Ernest Gellhorn, *Too Much Law, Too Many Lawyers, Not Enough Justice*, WALL ST. J., June 7, 1984, at 22, col. 3; Andrew Hacker, *The Shame of Professional Schools*, HARPER'S, Oct. 1981, at 22. The task can be seen in Drucker's comment:

Education in educated society must be education for virtue, and must aim at creating the desire for it. Education that does not strive for the "good man" is ignoble and cynical. Anyone as highly equipped with knowledge, with ability to learn, and with ability to do—and with income—as is the educated man of educated society, is equipped with so much power as to be a menace, if not a monster, unless he have virtue.

DRUCKER, *supra* note 20, at 156.

tant aspects of our systems, and how they can become better at what they do.

Obstacles to Change Within American Law Schools

The premise that change in the law schools is desirable or essential is not universally accepted. Even if there were substantial support for the proposition, it would be extremely difficult to achieve change due to very powerful obstacles that will resist any significant proposals. The obstacles to change within university law schools stem from at least ten sources. These are:

1. the expectations and demands of the legal profession,
2. the personal and professional agendas of law faculty,
3. the skills and knowledge of law faculty,
4. inertia,
5. the career goals and the values of law students,
6. the artificial hierarchy of elite, subelite, middle class and inferior law schools in which the elite schools dominate the research and academic curriculum,
7. the job market in which most law students still aspire to a traditional role in law practice and for whom little else is available,
8. the rigidity of other academic disciplines which are neither oriented toward cooperation with others or easily re-structured toward that end even if they desire,
9. the structure and content of bar examinations, and
10. financial resources.

These factors define an institutional system that is very resistant to change when that change is generated as part of comprehensive, sweeping and conscious proposals. A part of the problem is that American law schools are class-ridden. They play "follow the leader" and represent a modern academic version of a feudal aristocracy complete with princes, high-priests, minor nobility, "grubby merchants" and serfs. Such a system is inherently rigid. It can adapt incrementally within its own terms and values, but cannot decide to become a different system even if the changes would be demonstrably better. Similarly, the "feudal" system of American law schools helps us understand the strange phenomenon of why the "elite" law schools have always hired their own based upon a unique set of criteria that includes, 1) first law degree from an "elite" institution, 2) significant law review editorship, 3) extremely good grades, 4) Supreme Court clerkship, and/or 5) an associate position at one of a handful of private law firms.

Other disciplines that evaluate the people in their fields by mer-

itocratic standards, such as actual quality of research and intellectual productivity demonstrated as scholars in a particular area develop skills and maturity, have long found it strange that elite American law schools have locked themselves into a system that judges law faculty in advance based upon their academic performance as law students. True merit and intellectual productivity do not explain adequately the hiring behavior of the most prestigious American law schools. The concept of feudal aristocracy does. The elite law schools choose their faculty as they do because they are *anointing*, not *evaluating*. The criteria do not change and the career productivity of the unanointed does not matter because they are not “princes”—only “pretenders.”

This feudal system of law schools remains intact and erects a significant obstacle to change. Left to the decisions of academics and administrators, the law schools of the first quarter of the Twenty-first Century will attempt to look as much like those of today as humanly possible. Effective change will occur only if pressure is applied at the correct leverage points in ways that facilitate, require and provide incentives for experimentation and adaptation. This necessitates relaxation of some of the rules and regulations promulgated by the American Bar Association and boards of bar examiners that govern the activities and focus of the law schools. A great deal of what needs to be done, however, is within the power of law faculty. If they do not act, it is because they do not want to.

The American law schools of the first quarter of the Twenty-first Century need to identify several fundamental missions to drive their actions. These include providing the core knowledge all law students must have in order to understand what it is to think like lawyers and know the essential structure and functions of the law. It also includes the methodologies of law, legal science and law practice. Assuming law schools reconstruct their curriculum to better reflect these fundamentals, the next issue is what else law schools are responsible for doing and what choices should be made to allow the schools to best serve the needs of this society.

Changes in the Twenty-First Century Law School

What are the kinds of changes law schools ought undergo in order to be positive and meaningful institutions of social and intellectual consequence in the radically altered society of the Twenty-first Century? I recommend the following:

1. *Compress the required curriculum, both formal and informal, into a single year, no more than a year and a half.* At least half of the

law school experience is redundant. Massive amounts of time are spent delivering a set of courses justified primarily by history, familiarity and faculty comfort. The world of law does not fit neatly into the compartments. Learning the basic method of "thinking like a lawyer" is important but can be achieved in a year for most students, considerably less for many.

2. *Develop professional responsibility and practice curricula for the second year of the law school experience to prepare students for careers as lawyers.* This need not be a lock-step curriculum in which all students take identical courses. Different law schools tend to prepare students for different forms of law practice. Many students have no intention of engaging in litigation, other than perhaps appellate practice for which moot court generally serves as excellent preparation. This more intensive process of understanding and applying cases and statutes will also allow greater interaction between students and faculty through methods better able to reinforce the analytic skills of students.

3. *Develop extensive outreach and service opportunities for the third year of law school that utilize the students as active resources for people and institutions in need of additional resources.* Students would receive credit for their involvement in this "Peace Corps" of law students actively supervised by law faculty, and integrate their experience with intellectual understanding through seminars and research papers.

4. *Develop formal institutional linkages between law schools and other parts of the university including colleges of urban affairs and planning, economic development and business management, education and science.* This recommendation begins with the premise that those related disciplines will enrich the law school faculty member's understanding of law, focus academic research, broaden the experiences of law students, and extend the activities of faculty and graduate students from the other disciplines.

5. *Develop alternative degrees at the Masters level to bring people into legal education who have no interest in the actual practice of law but are already engaged in careers or disciplines that impact upon or interrelate with law.* These would often be pursued as joint degrees with another component of the university. This proposal is not intended to alter the basic approach to legal education for students desiring to become lawyers but recognizes that law is a fundamental tool of action and problem-solving (and problem-creating) in American society. To the extent that a basic graduate degree in legal study can be offered to others in ways that allow them to integrate knowledge of law, justice and political systems with their own ongoing

disciplines, this represents an untapped market and an important intellectual contribution law schools could make.

6. *Develop "action institutes" with the ability to bring skills and insights of law faculty into working relationships with groups within and outside the university with the aim of helping to solve problems and take advantage of opportunities.* This relates to some degree to the institutional linkages suggested in paragraph 4, but is also intended to reach out more directly to the needs of community institutions in ways that help them improve.

7. *The nature of the bar examination should be radically altered.* A one-day exam over a limited number of subjects is adequate to determine whether an applicant has mastered the analytic process of legal practice as well as a substantial range of information. Bar examinations are one of the greatest obstacles to productive experimentation by law schools because of the *in terrorem* effect they work on law students who focus excessively during law school on taking "bar" courses.

8. *The curriculum ought to be altered in the ways suggested previously, phasing the changes in over a period of five years in order to train and recruit faculty capable of dealing with the new knowledge and approaches.* Part of this process should involve early retirement buyouts for willing faculty at the high end of the service and salary scales in order to free up slots and financial resources for the new people.

9. *Law schools must begin to diversify their placement programs and expand funding of those programs so that new kinds of jobs for graduates are developed.* Several law schools have initiated loan forgiveness programs or salary supplements for public interest jobs taken by their recent graduates. Unless the schools devise ways to facilitate the career choices of students interested in engaging in less traditional careers, students will tend to flow toward traditional positions. The law schools have a critical role to play in aggressively pursuing other avenues of employment for their students.

10. *Law schools must begin to identify, refine and use the concepts and data of justice and injustice as an important part of teaching, research and service.* Several of the recommendations are made with the "justice mission" in mind. This mission complements the technical, purely intellectual and professional goals that also are valid parts of the overall mission of the university law school. Without the justice mission, the law schools lack a moral direction and a soul. Edwin Garlan captured this when he described justice as the motive force of law.¹⁶⁴

¹⁶⁴ GARLAN, *supra* note 162, at 125.

I have found the most compelling articulation of the responsibility of the modern intellectual to be contained in a statement by James Schlesinger, commenting on the views of Hans Morgenthau. I keep returning to this statement in my work because for me it sums up the intellectual's responsibility better than anything else. It applies directly and unqualifiedly to the responsibility of faculty in the American law schools. Schlesinger writes:

The contemporary intellectual, in [Morgenthau's] view, lived in a world that was distinct from, though potentially involved with, that of the politician. The intellectual . . . seeks truth; the politician, power. And the intellectual . . . can deal with power in four ways; by retreat into the ivory tower, which makes him irrelevant; by offering expert advice, which makes him a servant; by absorption into the machinery, which makes him an agent and apologist; or by "prophetic confrontation."

Of the four modes of response, the last seemed to him most faithful to the intellectual's obligation. The "genuine intellectual," Hans Morgenthau wrote, "must be 'the enemy of the people' who tells the world things it either does not want to hear or cannot understand." The intellectual's duty is to look "at the political sphere from without, judging it by, and admonishing it in the name of, the standards of truth accessible to him. He speaks, in the biblical phrase, truth to power."¹⁶⁵

¹⁶⁵ James Schlesinger, *Intellectuals' Role: Truth to Power?*, WALL ST. J., Oct. 12, 1983, at 28, col 4.